

COMMITTEE C
CHARTER COMMISSION
MEETING MINUTES
FEBRUARY 27, 1992
COUNCIL COMMITTEE ROOM

Present

James Cockett
Sherrilee Dodson
Dolores Fabrao
Victor Reyes
Allan Sparks
Anne Takabuki (Committee Chair)
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)

Excused

Annette Mondoy
Robert Nakasone
Jamie Woodburn

- I. CALL TO ORDER
Committee Chair Takabuki called the meeting to order at 3:11 p.m.

II. PUBLIC TESTIMONY

- A. Jim Smith, Haiku, read his written testimony for the record (see Communication 92-16 attached and hereby made a permanent part of these minutes).

Sparks: "What do you mean by public censure?"

Smith: "In my resolution submitted December 9, 1991, I requested that Section 10-5 be amended to read 'Any Board or Commission of the County determined to have violated provisions of this Article, shall publish a description of its violation and an apology in all local, daily, weekly and monthly newspapers, addressed to citizens of this community and any other administrative remedy the Board of Ethics deems appropriate.'"

Sparks: "Your example sounds to me like a very interesting case and it may be a good example of inconsistency and maybe not a lot of logic, but I'm not convinced that this is a case of unethical conduct. From the example you've given, it looks like perhaps it's just a stupid decision. But, I don't see the unethical part."

Smith: "What I'm using as my definition of ethics is the idea of objectivity and consistency, and the idea that the act would justify trust and confidence. Stupidity in itself won't detract from confidence; I think trust, you might have a problem with. I think in this public arena the consideration of the matter needs to have, at the forefront, consequences. So in that sense, it would be unethical if the consequences, would in effect, diminish trust and confidence."

Committee Chair Takabuki: "You were saying the actions of the Boards should be scrutinized ethically, whereas, right now, it is an individual matter."

PUBLIC TESTIMONY

A. Jim Smith (Continued)

Sparks: "I wonder if you can sense the dilemma we would have if we tried to set up a way of some board, like the Board of Ethics, being able to rule or overrule actions of other boards or officers because their view destroyed confidence in government, and how 'slippery' that could be for whoever has that authority, to use that excuse. For example, I just see an awful lot of subjectivity and 'slipperiness' in trying to do anything like this."

Smith: "There's a problem and it's not going away, it's getting worse. It seems to me that a methodology could be developed within the Board of Ethics..."

Sparks: "I see your proposal as setting up a 'good government board,' called the Board of Ethics, that's going to be THE authority in these matters, and that gets really tricky. I'll look at what you've got here pretty carefully, but my first blush, I want to be honest with you, it doesn't look like it would fly; it just doesn't seem to fit anything that would be workable, from my point of view."

Smith: "Would you suggest something that might work?"

Sparks: "It's an ongoing struggle to have good government that instills confidence in people, and we're always going to have issues where at least some of the public's not going to feel they're getting good government."

Fabrao: "Did you, at any time, approach the Board of Ethics on these issues?"

Smith: "I haven't done that."

Reyes: "It seems to me that you want the Board of Ethics to govern other boards and commissions as far as decisions. It doesn't fit."

Smith: "If we don't have a code of ethics that focuses on the objectivity, on the due process, on the procedure - not the result, and that is, in fact, what they would do..."

Yonenaka: "One question. On the Board of Variances and Appeals, if the decision making was taken out of their hands and put into somebody else's hands, and this was consistent with other boards and commissions, where they do not make law or change law, would that be something you would be in favor of? For instance, if the decision making was put back with Council?"

II. PUBLIC TESTIMONY

A. Jim Smith (Continued) "The variance procedure is in place where it goes to the Council. The issue of appeals, that I was speaking to, doesn't go to the council at this point in time. You're suggesting to replace the Board of Ethics with a council and use that as a vehicle for this kind of appeal?"

Yonenaka: "No. If in the case of the streetlights...if that was a council decision and the council said 'no, you can't build it because you need the street lights,' and let's say the same result came about in terms of the decision, then wouldn't the ethics commission be able to look at the council members?"

Smith: "I would say no because the council is an elected body, and I think in that circumstance, when it is reviewed by council, I don't think the Board of Ethics should have an overview capacity in that respect."

Yonenaka: "I'm talking about they can look at the council members as individuals, because the council members are employees of the county. They qualify for the Board of Ethics to investigate them..."

Smith: "My issue is not for individuals and the procedures set up for individuals. I'm saying the Boards and Commissions need to oversee what's going on. There's got to be a concern for that element, of trust and confidence, and if there is none...For example, the Charter is a very good charter, it's just simply not enforced by the commissions, I guess."

Smith: "If you let this one go, I think you're missing a fundamental problem we face. If there's not a change made to signal that trust and confidence in the people who are elected and in the appointed boards is vital to the way we live here. It won't be..."

Yonenaka: "I would say that's impossible to guarantee."

Smith: "It's not impossible to guarantee. All you have to do is in the Charter make reference..."

Yonenaka: "If the Board of Ethics chooses not to investigate, we cannot force the Board of Ethics to investigate; we cannot force the Board of Ethics to come up with a certain decision..."

Sparks: "And what if the Board of Ethics makes unethical decisions..."

Smith: "If that's the case, I don't think there's too much hope. I'd rather have that be the board that is unethical than any other board."

Sparks: "You're saying that there are decisions that can be made by boards that are unethical and that are destructive of the public trust, and you want some place to take those kinds of decisions...another board to take them to, which is consistent with our whole structure of government, all the way up through the state and federal government...that is, there's always another place to appeal to...there's always a check and a balance. But, we're having trouble seeing the Board of Ethics as the final arbiter."

Smith: "I can see that. What I would hope, and perhaps I've been too ambitious, and would suggest that a simple reference in the Article to the issue might be sufficient."

III.

OVERVIEW/DISCUSSION OF ARTICLE 10, SECTION 10-2
BOARD OF ETHICS PROCEDURES

- A. Reverend Paul Kaneshiro, Chairman (Unable to attend)
- B. Maile Luuwai

Chair Takabuki noted that a communication (see Communication 92-11 attached and hereby made a permanent part of these minutes) was received from the Board of Ethics, discussing some recommendations for changing the Charter.

Luuwai: "Basically, these changes would be inserted in Section 10-4 Prohibitions., Article 10."

Sparks: "Can we de-sex the language?"

Luuwai: "The whole charter needs to be degendered. We got this language from the State Code of Ethics. We didn't have any provision in our County Code of Ethics (for number 1.) and the commissioners decided that this was something they'd like to see in our code, because it's not addressed.

Number 2. would amend Section 10-4 (e)
[Note: Written request incorrectly identified this as (c)]. Basically the Board wanted to include county time, equipment and personnel.

The (the Board) would like to see (d) deleted.

Number 3, 4, 5, 6, 7 and 8 deal with conflict of interest.

Number 3--Our Code of Ethics did not have a provision like this. All the commissioners agreed that something like this would be appropriate in our code, because there may be instances where someone decides to solicit or try to sell to a subordinate, and they feel they have to purchase something from this individual, and there's nothing in the code that really would prevent this type of activity. Or, you may have a situation where you're supervising, or you're inspecting sights and you want to sell something..."

Reyes: "I can undersand this, but in the County, fundraising in offices is very common. Are you creating a can of worms here, or what?"

Sparks: "Or, closing one."

Reyes: "You're actually creating an opportunity for controversy. It's a different matter if you say, 'I want you to invest in this thing, so I need your help, I need your money.' That's a different situation. Are we really opening up another area for more controversy, rather than what we have right now?"

Luuwai: "You probably are."

Chair Takabuki: "But isn't it true, in interpreting it and actually ruling on this, you can look at this as something NOT intended to be covered, just like with gifts. I think you can give gifts of candy, gifts of small items or tokens, and it might seem it would violate the code, but it really doesn't, because the code has said 'no, these kinds of things are commonplace, and we don't want to stop that kind of ..."

Sparks: "What about fundraiser tickets for a politician's fundraiser?"

Chair Takabuki: "That would be different."

Fabrao: "So, that would probably have to be spelled out. But, if you use this general language, that would eliminate my going to workers and saying 'I represent the Girl Scouts or March of Dimes, will you contribute.'"

Luuwai: "I agree with Anne. The Board would probably interpret it as a nominal fundraising activity, as like you are allowed to accept nominal gifts. So as long as it doesn't exceed a certain amount...You may have the case where somebody tries to dump \$50 worth of sweetbread on you, and that might be interpreted as a financial transaction, but if it's a nominal fundraising type thing, I don't think it would be covered."

Sparks: "Still, the issue is if I'm your supervisor, and I come to you with my Girl Scout cookies, you're under alot of pressure to buy, right? Maybe that was their intent; maybe they do want to stop all that stuff."

Chair Takabuki: "You're not supposed to hassle the staff in the building, but of course, it goes on..."

Sparks: "Is their intent to really put the kibosh on all that?"

Luuwai: "To be honest, the Board never did discuss that."

Yonenaka: "Just guessing, I think the intent was that if they do look at someone, they want the law to be specific enough to say 'you did violate the code.'"

Reyes: "What is going to prevent someone from sticking to the letter of the Charter, even for one dollar? I know it's silly, but someone can stick that thing since it's in the Charter."

Yonenaka: "This is in the Honolulu Charter?"

Luuwai: "Yes, in the Code of Ethics."

Fabrao: "I was wondering if there was some way we could word it so it could cover those type of things. I think the intent is hardcore business, that kind of transaction that would involve hundreds of dollars and stuff, not penny ante stuff."

Luuwai: "That may not be necessary because every case is different. I think the Board would prefer having this general language, and then interpreting it to allow for certain types of activities." For example, you have in 1.a., you are not allowed to solicit or receive any gifts, where it can be inferred that the gift is intended to influence you in the performance of your job, but the County employees are allowed to receive nominal gifts. So instead of having that kind of restrictive language, the Board would prefer having someone come and request in each situation. And, it depends on the facts and circumstances. But, if you wanted to put language to clarify, the commission could do so."

Reyes: "Do they have internal rules that can define what is gross and what is nominal? For example, up to \$50 is okay; beyond \$50 more than once a year, that's conflict of interest. Does the Board have that internal thing that will determine whether it's okay?"

Luuwai: "We do have a memorandum from Corporation Counsel, and I think we do have an opinion or two from the Board of Ethics, that what is nominal is around \$25.

Reyes: "My concern is we don't want to put something there that someone can take the county or Board of Ethics for something that's silly and hold them accountable for that because of the wording. You never know what type of individual is actually going to abuse that provision in the Charter."

Fabrao: "So that's an entirely new number then? That would be number 4?"

Luuwai: "It would be placed wherever the Commission..."

Sparks: "While we're still there, can I ask your opinion: If something like that were put in with some additional words like are in 1.a. already, about under circumstances of which it can reasonably be inferred, etc. etc. would that help at all or just make it worse? ...interfere with the performance...Some guidelines but a lot of flexibility, too."

Chair Takabuki: "That's a good thought...a good point."

Luuwai: "Number 4. The rest of the proposed amendments were intended to deal with section 10-4 d. of the code where it says that an employee or official cannot represent private interest in any action against the interests of the county, or appear on behalf of private interests before any agency. The Board's concern with that provision is that it was too restrictive. For example, a commissioner may want to go to the Planning Department for a permit for their agency and this would prevent that member from doing so. Or, going to the Department of Human Concerns for an agency they are working for and this provision would essentially hinder them from doing activities. So, what they did was take a look at the State Code of Ethics and decided these provisions would outline, and were a little bit more clear, and would provide an opportunity for people to keep on boards and commissions, and other employees, to assist other organizations or the people that they work for. So, that basically would take care of if anything comes before them, if they have a financial interest in that matter, they would not be allowed to take official action in that matter. They liked the provision in the Code of Ethics that allowed a department head to take official action on matters, even where they have a financial interest, as long as they disclose that financial interest, primarily because there are some projects that require department head approval."

Chair Takabuki: "That he has a financial interest in? I have a hard time with that. It doesn't seem proper that the department head should be able to approve something that they do have an interest in, when actually, just with an escape clause as long as you put it in a financial disclosure statement, it's okay. I would have a problem with that."

Luuwai: "That's what the Board recommended."

Chair Takabuki: "Did they have a situation in mind? I can't think offhand where I'd think it would be okay."

Luuwai: "For example, SMA permits require..."

Chair Takabuki: "So like a planning director could give an administrative approval..."

Luuwai: "Under the Planning Rules & Regulations it requires the director for the department of planning to approve the SMA, whether it's going to be an SMA minor/major permit. That would be one situation."

Chair Takabuki: "So under this scenerio, he could approve it even if he had a vestment in this project, as long as he had put in his financial disclosure that he was a member of X-Y Hui."

Reyes: "Is that the current situation now, if you disclose you can..."

Luuwai: "No, currently you can't. It would be incompatible with the proper discharge of your duties under 1.c."

Reyes: "I have a question about financial interest. How specific or how restrictive is that? Would it be personal financial interest or my personal investment, or could it be because I will benefit indirectly because the person involved is a relative? How does the Board look at that?"

Luuwai: "Our Board abides by the HRS definition of financial interests, and that would mean if you have a personal financial interest, or your spouse or dependent child, but if it's your grandmother, that wouldn't be part of your financial interest."

Sparks: "Back to d. that they want to delete; that's not being covered by these, is it? They just want to delete that?"

Luuwai: "5, 6 and 7 pretty much deal with that, allowing individuals or employees and officials to represent other interests. Basically it's up to this Commission whether if they want to accept this, they're just recommendations."

Chair Takabuki: "I just want to understand some of these. So they pretty much took it from State Code, and didn't really discuss the circumstances they had in mind?"

Luuwai: "They just thought the State language was alot clearer and would give them more guidance."

Sparks: "This one right above 5. "A person whose position on a board or commission..." Do we have such boards or commissions or committees?"

Chair Takabuki: "Yes, like the Board of Code Appeals where they must be architects and engineers, but other than that I don't know what ones..."

Luuwai: "I think Planning you have some, too..."

Chair Takabuki: "No, it's not required there..."

Yonenaka: "It's possible that they could appoint a commission to a special commission, and they would say you have to..."

Chair Takabuki: "...one lawyer, one doctor,..."

Sparks: "And what it is giving them is that they have to have a financial interest that is related to the members' particular qualifications."

Chair Takabuki: "Let's think about that...you're an architect..."

Yonenaka: "But you have to be appointed to that board first because you are an architect."

Sparks: "What it's saying is you can rule on a business you have a financial interest in. You're only prohibited from doing that if the financial interest is related to your architecture's degree."

Chair Takabuki: "This is hard to read..."

Yonenaka: "That means you can have financial gain if it has nothing to do with your business, your personal qualifications for being appointed to that board. Because it does specify..."

Sparks: "So if you were an architect and you had a business that was agriculture, nothing to do with architecture, and it came up before the Code of Appeals, you couldn't deal with that because you have a financial interest in that. But if it was an architectural firm of yours that had a financial interest, you could."

Sparks: "Oh, I've got it reversed. You can't deal with your architectural business but you can deal with your ag business."

Yonenaka: "If you were applying for the Board, partly because of your specific qualifications, you cannot decide a case where your financial interests would be increased, if it affects directly to your qualifications or field. That's a long way of saying 'you can't vote on your own business.'"

Fabrao: "Why can't we just say it in plain language then?"

Luuwai: "Actually, that would be covered in number 4.

Fabrao: "So why was this extra paragraph put in there?"

Luuwai: "They actually wanted more stuff in, but I went back to another meeting and said 'wait a minute, we have to look at what we are putting in here.' So, we went back over it again, and they said 'no, we like that.'"

Sparks: "Well, thank you for keeping us from more paragraphs like that! There might be a rare circumstance that wouldn't be covered, but we can't cover everything."

Yonenaka: "What is does is give the loophole for number 4, because actually in number 4 a department head cannot make any decision affecting anything that he has a financial interest in."

Sparks: "That's department heads, though, but any official appointed as well..."

Chair Takabuki: "The concern is boards and commissions, right?"

Sparks: "Boards and commissions, under 4, can't take any official action directly affecting their businesses or financial interests, or a private undertaking."

Chair Takabuki: "Okay, number 5."

Luuwai: "This basically covers future acquisition."

Sparks: "So, let's say I'm on this commission already, and I'm a real estate agent, and I represent some developer in front of the planning commission, for some contingent fee if we're successful...I couldn't do it, is that what you're saying?"

Luuwai: "You could, because it wouldn't be directly involved in official action to be taken."

Yonenaka: "If you didn't have that vestment and you were on the planning commission, then you couldn't get involved, correct?"

Luuwai: "If you had reason to believe that would be coming forth. Or there could be a loophole in this. You could acquire the business and just refrain from voting on the matter when it comes before the Board. Just disqualify yourself."

Sparks: "So, for example, if Wailea comes forward before the planning commission right now, you can't represent their interests in front of the planning commission because you're on this commission."

Chair Takabuki: "Yes. That has been a problem, getting people to set on commissions."

Luuwai: "Number 6 ((read verbatim)). Number 7 is pretty much similar to number 6, but it's more specific, in which the individual has participated or will participate. What we mean 'before the council' is if it is an elected official. I don't think we meant that to apply to...that was meant so council members could not, elected officials could not act in a representative capacity in front of the council. So, basically somebody can't pay you to go before your own agency, where you're employed, because you know everybody."

The Board's intent was to keep an open door and allow people to represent businesses or other organizations, and only prohibit that representation where there's a fee. Because, they thought it was too restrictive just preventing them period."

Sparks: "Fee or other compensation, so if you get something two or three years later, that's other compensation. As long as you do it and you're not getting anything financial, it's okay."

Luuwai: "Number 8 ((read verbatim))."

Sparks: "Then he can do it? Make a disclosure, and then he can do all those things? Is that important to keep?"

Yonenaka: "Wow!"

Luuwai: "It's just a recommendation."

Fabrao: "Again, that would be just an individual basis. Is that the intent? Is there a ruling already, that says if you are involved in x amount of dollars, or how much percentage of a business, that you are automatically barred from making any decisions on any of these issues that come up?"

Luuwai: "There's nothing like that, no."

Sparks: "If you read 7 and then 8, it seems like 8 says the same thing except..."

Chair Takabuki: "You have an escape clause."

Sparks: "...except that you can do all those things that 7 says you can't do, as long as you file the disclosure requirements, and you have to do that anyway, if you're on a board or commission, or a department head or a deputy, or whatever. Doesn't one wipe out the other?"

Fabrao: "How would that compliance with that disclosure requirement excuse him or her from making a decision regarding his or her business, if he has that kind of interest, just because he disclosed it?"

Luuwai: "Basically, it would make the conflict of interest known."

Sparks: "That's weird."

Fabrao: "That's kind of scary, too, because a decision could be made where it would be in conflict, but then sometimes these things take so long that the conflict may not be publicized till after the decision has been made and money has been exchanged. How do you handle something like that then?"

Luuwai: "Actually, if that individual hasn't complied with the disclosure requirements, and goes ahead and does it, that person will be in violation of the Code of Ethics, and will be brought in before the Board."

Fabrao: "So, regardless of whether it was today or next week, or three months from now..."

Sparks: "If you initiated a complaint. This dovetails with a note I took when we were talking to the people from the Board--they were concerned about getting some control over lobbyists."

Luuwai: "In fact I didn't put in here, but we did want to put a provision in Section 10-2. Amend 10-2 to put in a section d, that would allow the Board to receive and file lobbyist registration forms. Just receive and file it, because the Maui County code requires lobbyists to file lobbyist registration forms with the Board of Ethics. But, that's not a function of the Board of Ethics under section 10-2, so we just wanted that to be clear."

Sparks: "The Code gives them that and not the Charter?"

Chair Takabuki: "Have there been alot of lobbyist filings or registrations?"

Luuwai: "Basically, I just found out about this a few months ago. I got a call from someone who wanted to file a lobbyist form. I think we only have two lobbyists filed previously. And, all the code says is that you just have to file a lobbyist registration form. And, we just look at it and file it."

Sparks: "Is it in public file, then?"

Luuwai: "I don't know the reasons behind that provision in the code--it doesn't even define lobbyist."

Chair Takabuki: "So this should be in the Charter."

Yonenaka: "And it says here in the last paragraph, that 'If the Charter Commission accepts the Board's proposed amendments, the Board's requests that Section 10-4(d) of the Charter be deleted', too. So we're going to take out d and that's why they put 8 in. Because, actually the only one that is the problem, I think, is that the official can act as a representative, as long as he has filed his disclosure requirements. Right? Right now it says he can't, period. And, I just wonder if Jim Smith saw this yet."

Fabrao: "He means well, but in every single situation, what would be ethical to somebody, may not be ethical to somebody else. And so there's so many different degrees of..."

Luuwai: "That's why the Board of Ethics has a very tough time when we have complaints."

Sparks: "Are there alot of complaints?"

Luuwai: "Actually, we had alot recently. Actually, there was one complaint against six people, so that turns into like six kind of separate complaints."

Yonenaka: "Is this all private and is not disclosed in public?"

Fabrao: "So, I still don't know why he didn't go to you..."

Chair Takabuki: "But, even if he went to the Board, they would reject it because there was nothing specific, he could cite nothing."

Sparks: "If they're really trying to make it more possible to represent private interests before other agencies, they haven't done it."

Yonenaka: "Well, they have if they eliminate d."

Sparks: "No, because they've replaced it with 6 and 7."

Chair Takabuki: "The words 'any county' bothers me. I can see why you can't go before your own Board, but why can't I go before the Liquor Commission..."

Sparks: "Well, that's what they're trying to do, to facilitate that. But the place where they put in the loophole of 'unless you've complied with' disclosure requirements...they seem to be talking about agencies where he has official authority over, not any agencies."

Chair Takabuki: "Right, for 8."

Sparks: "That's the one where we DON'T want the loophole. The others are where we want the loophole, right?"

Chair Takabuki: "We'll ask Reverend Kaneshiro to come to the next meeting, since he was sick today, and in the meantime we can talk a little bit more about it. But, at least we have an understanding of it."

Luuwai: "And, what I'll do is go back to the Board and with your concerns, and revise our recommendations."

Chair Takabuki: "One other thing, did the Board have any comment on that proposal that the legislative body actually police their own members as to unethical conduct? Remember the letter from Hokama, we discussed it when the Reverend was here and he said he was going to discuss it with the Board."

Luuwai: "Well, the Board said if the council wants to police themselves they can. I don't think the Board necessarily agrees with it, but you know..."

Chair Takabuki: "As far as we know, no county allows that, right?"

Sparks: "Certainly the Federal does that, and that's why we all hold them in such high esteem, because they police themselves!"

Chair Takabuki: "Legislators are subject to the State Code of Ethics, correct?"

Sparks: "But they do have hearings when somebody gets caught on prostitution, and so forth, they do their own censuring and deciding not to censure, that sort of thing."

Chair Takabuki: "So is that just in addition to whatever the State Board would..."

Luuwai: "I think it is."

Fabrao: "So what the council wants is to police its own ethical conduct and that it wouldn't come under the Board of Ethics?"

Luuwai: "That's what the councilmembers want."

Chair Takabuki: "That was a proposal, just on the table, that they come up with their own..I don't think the public will ever go for that either. If I understand you, everything else was going to remain as is, from f. on, though?"

Luuwai: "Right."

IV. OVERVIEW/DISCUSSION OF ARTICLE 9, FINANCIAL PROCEDURES RELATING TO COUNCIL

- A. Alice Lee, Councilperson, was unable to attend. Discussion deferred to a later date.

V. OVERVIEW/DISCUSSION OF ARTICLE 11, INITIATIVE PROCEDURES

- A. Darryl Yamamoto, County Clerk, presented his recommendations for revisions to Article 11 (see Communication 92-14 hereby attached and made a permanent part of these minutes.).

Yamamoto: "I reviewed the Charters from the other counties and the provisions dealing with initiative with ours, and I have a few recommendations that I'd like to make. Some of these would be fairly simple, not substantive recommendations.

The first is in Section 11-3. In item 3 our Charter states that each signature shall be followed by the place of residence and voting precinct of the person signing. First of all, there's no reason for us to have voting precinct in there. Most people don't know what their voting precincts are, and it doesn't do anything for our confirmation process. What I'd like to substitute instead is something similar to what the other counties have, and that would be a printed name, signature, address. Some of the other counties have the date of signing the affidavit; I'm not sure how important that is. If I had my druthers, I like to require the social security number of the individual, but there may be a legal problem with that. There is one county that does require it, and I'm not sure when that provision was included. And, the reason for that is in the confirmation process the fastest and best way to confirm whether the person is a qualified voter is by the social security number. To do a name search, it takes longer and it's more expensive to do."

The biggest problem we have, like for nomination papers at the present time, is people don't print legibly or some people's signatures are just totally unrecognizable, you wouldn't be able to tell what it is. If we have to go strictly by someone's signature, it becomes impossible to do.

In our Charter now, we don't have a specific requirement for printed names like the other counties do, and to me that would be a necessity, at the very least.

Section 11-4. There is a requirement here that within thirty days, after filing with the Clerk of the affidavit described in 11-2, all papers forming an initiative petition shall be assembled and filed with the County Clerk as one instrument.

Maui County is the only one that has that requirement. I do think it sounds to me like it's pretty unreasonable. I don't see the necessity for having the time period in which they must submit the completed petition, from the time they file an affidavit with our office. That sounds unreasonable.

Also in 11-4, all the other counties have a provision where an individual may request to withdraw the signature within fifteen days of the filing of the petition. Maui County does not have that. And, I believe it's in there for a good reason, should someone feel they may have made a mistake in signing the petition, or misinterpreted the proposed ordinance.

Section 11-6, item 2. This is my 'biggie.' Maui County is the only one that requires a special election for any initiative. Hawaii County states that if the petition is found to be complete and it has the required number of signatures, then it's placed on the general election ballot. Kauai County says the same thing. Kauai County has an additional provision which states that 'the council may, if appropriate and at the council's discretion, hold a special election. Kauai did have that special election about Nukulii. Kauai informed me that one of the parties involved paid for the election. I thought that was a little interesting.

For the city and county of Honolulu, they require 10% for their initiative, and then the proposed initiative is placed on the general election ballot. They do have another provision which states that 'if 15% of the qualified voters from the last mayoral election, and if the petition calls for a special election,' then they will have a special election.

So Maui County is the only one that states a special election will be held. So if you think about it, it could actually mean that we could be required to hold an election a month before a regularly scheduled election, if it falls within that time frame. And, we have a regularly scheduled election every two years, I'm just wondering whether a special election is really necessary."

Fabrao: "What kinds of issues would be addressed with an initiative? Codes, getting somebody out, recall?"

Yamamoto: "There's a special section on that recall, but it would be anything other than what's not prohibited under Section 11-1. And, of course, land use."

My final recommendation deals with Section 11-7 and that is on the voting requirement. The existing language is 'if a majority of qualified voters voting on the proposed ordinance.' What I would really like to recommend is that wording be changed to 'if a majority of qualified electors who draw ballots. What that means is the existing wording appears to refer to qualified voters who actually vote on the proposed ordinance. In other words, that would be votes cast.

And, in the past when we look at Charter amendments, you end up with a minority of the voters who actually drew ballots approving a Charter amendment. Or, in this case, approving an ordinance through initiative."

Sparks: "And, the general wisdom is that's bad."

Yamamoto: "Well, I see it as not being necessarily being good, because you are looking at a minority of voters turning out on election day determining whether the proposed ordinance should be passed or should be put into effect through this initiative process, just like a Charter amendment. I didn't think that was necessarily good.

The State Constitution is done differently. It's not based on votes cast, I believe it's based on either turnout or registered voters, but it's not on votes cast. On votes cast, we exclude all blank ballots.

In 1988, blank ballots on the nine (Charter) questions ranged from a low of 7,000 to a high of 10,000 plus blank ballots."

Sparks: "So in that 1988 thing, that would not have passed."

Yamamoto: "Six of the nine wouldn't have passed. But, as it turned out, all nine were approved."

Chair Takabuki: "One had more blank ballots than yes votes. Strange."

Sparks: "Why would people take a ballot and not vote on that?"

Yamamoto: "For that particular election, the two major responses were number 1, they didn't understand; number 2, 'I didn't want to spend the time.' Because, on the Charter amendment questions took up two ballots, front and back. So, in addition to that you had your eight ballots--candidates ballots, board of education, three constitutional questions, then you had those two for Charter amendment ballots, and the OHA voters got an additional OHA ballot. So alot of voters just didn't want to spend the time, or just didn't understand the questions."

Sparks: "That sounds like rational voter behavior to me. And, I think most of those voters must have willing to let those who did wanted to take the time, or knew something about it, make the decision."

Yamamoto: "I think I'm more concerned with the voters who didn't understand it."

Sparks: "I'm more concerned about the voters that didn't understand it and voted on it."

Fabrao: "I've been a voter for quite awhile now, and some of the language, I think I can read pretty well, but even reading the paragraph that Luuwai wrote up...we had to read it three times. We have teachers and attorneys and whatever else, and we still didn't understand it. Can you imagine the regular citizen, who was not as educated as most of us?"

Sparks: "So that kind of change is really going to make it harder to pass changes in the Charter or pass petitions."

Yamamoto: "Well, we're lobbying for that. By we, I mean the Association of Clerks and Election Officers, the Hawaii State Association of Counties, is lobbying to get this bill passed by the State to amend this from a votes cast to ballots drawn. And, most of us feel the County Charter is our Consitutional document, and it shouldn't..."

Sparks: "...be too easy to pass by minority."

Yamamoto: "A minority of voters who actually go out to vote on election day, but it's a minority that determines what is changed."

Sparks: "Invariably, the kind of work we're doing here is hard for the voters to understand. So it would be easy for all our work to come to nothing, if you get that change, because not enough voters understood it to vote on it. Which puts an even larger burden on our educational efforts. I can see the logics, just practical result means alot of work goes down the drain."

Yamamoto: "In the '82 Charter Commission, that's when we discussed earlier whether it should be a single question on presenting a revised charter to the voters, or a number of questions. And, in '82 I think the publicity at that time was fairly extensive and a lot of people knew what was being proposed, and having that single question to vote on, I think, made it a lot easier for them to vote on."

Sparks: "Same thing in '76, when I was on the Charter commission. There was one question basically, and we had a separate one for four year term for council. All the other changes were either up or down, accept them all or none of them. And, we did quite a bit of education, too."

Yamamoto: "And, they got approved."

Sparks: "Yes, to the dismay of lots of people."

Reyes: "I was concerned that a minority of voters might be able to, who are more articulate or vocal, could pass through an initiative. In the petition stage you have a percentage requirement, do you think that 20% is not high enough, or..."

Yamamoto: "Kauai and Maui have a 20% requirement of the registered voters from the last general election. The City and County of Honolulu has 10% of the voters in the last mayoral election. Big Island has 15% of the total voters from the last mayoral election. I talked to the City (Honolulu) clerk today and he's going to be meeting with their Charter commission and he's going to recommend that they change that from the voters from the last mayoral election to what we and Kauai have. He's going to recommend qualified voters from the last general election."

Sparks: "So if you weren't a registered voter in the last election, you're not going to be verified as meeting the petitional requirements."

Yamamoto: "It depends on the wording, because if it's just strictly a percent, if it's 20% of qualified voters from the last election, as opposed to being 20% of the voters who actually voted in the last election, or who were qualified voters in the last general election."

Sparks: "What it says now is 20% of the voters registered in the last general election. So, if you didn't register in the last general election, no sense signing the petition, cause you're going to be written off."

Yamamoto: "Right. And, I think it might be a protection against those who might want to get a petition going and just having people register to vote, just for the sake of signing the petition. Which, can happen."

But as to the 20% figure, it's difficult to say whether it's too high--it's the same as Kauai. 20% of the voters on Kauai were able to get that Nukuolii issue. It's interesting, Kauai, in 1990, had a proposed Charter amendment, but it was a little complicated. One of the questions they put to the voters was that if the voters wanted to 'have the initiative power extended to real property taxes.' But, the question went on to say 'and do you want to reduce the signature requirement from 20% to 5%.' And the results were about two-to-one, approximately 12,000 voted no, and about 6,000 voted yes. But, because of the way the question was phrased, I'm not sure how to interpret that."

Yonenaka: "How many initiative votes have ended up on the ballot in Hawaii, off hand?"

Yamamoto: "I'm not aware of any on Maui. And, Kauai was Nukuolii was one..."

Dave DeLeon: "It was two--they did Nukuolii twice. There was one on the Big Island."

Chair Takabuki: "Sandy Beach...but you can't do that any more, land initiatives."

Reyes: "So how would you phrase 11-7 again?"

Yamamoto: "I'd suggest that that be changed...if a majority of qualified electors who draw ballots...for lack of a better way to describe it. That's the way it's being proposed."

Chair Takabuki: "Votes cast excludes blanks."

Yamamoto: "It does. That's the state law regarding Charter amendments, because that's the opinion from the A.G.'s that blank votes are not votes cast."

Chair Takabuki: "Can you explain the new initiative bill?"

Yamamoto: "The way I understand the bill, through this initiative process, if you get 5% of the registered voters from the last mayoral election. If you get 5% of the signatures within x number of days and then the council's action or proposed zoning will be staid for a certain period of time. And then you have an additional time to get another 10%, or an additional 5%, of the signatures of the registered voters. But then, the council would still have the ability to review it and reaffirm their original position. In other words, just nix everything that was started by this initiative process. And that, is why I think there is a lot of dissatisfaction with that."

Sparks: "We've got all these prohibitions here on our initiative. Do you know what counties have similar prohibitions. Are they keeping initiative from..."

Yamamoto: "I've got the other Charters here and I was trying to do a comparison, and I believe the County of Hawaii just redid their Charter. And, as I was reading this, it doesn't seem like the County of Hawaii has any prohibitions left."

Sparks: "So, in theory they could have initiatives about property taxes, capital programs, annual budgets, issuance of bonds, appointments of employees...all those things we're prohibited from "

Yonenaka: "Has anyone ever even taken out the papers to try for initiative?"

Yamamoto: "Not on Maui. And, I think the thing that would make it the most difficult, would be doing it within thirty days."

Sparks: "That's why we do this every ten years, to clean up this crap..."

Yonenaka: "If you can get 20% in thirty days, they should just pass it already!"

Chair Takebuki: Would you like to add anything else? Darryl was on the first Board of Ethics

Yamamoto: "My biggest concern is watching or reading about the Board over the past year or two years. I'm not really sure if the Board is following their own rules and regulations, because there was a lot of controversy that came out about individuals from outside. And there was some confusion about whether they were issuing an advisory opinion or not, and the way the rules were drafted.

And, the way we did it (back in the early days)--an advisory opinion is strictly for an employee or officer of the County to use and ask advise from the Board on some contemplated action. And, the Board is supposed to respond within x number of days whether the person would be in conflict or not. If the person abided by the Board's opinion, the person would be protected.

But it was not actually for the purpose of a party from outside of the County asking for an opinion on an officer or an employee. Which, is what I think happened. I guess it seemed that the Board didn't want to treat it as a complaint. And then in not wanting to treat it as a complaint, they tried to treat it as an opinion, which was incorrect. A county employee can ask for an opinion on herself but not on another party.

Dave DeLeon: "They missed that nuance."

Yamamoto: "But that's the biggest concern I had. And, that doesn't only apply just to the Board of Ethics. There are other boards and commissions that have their own rules and regs and I feel that sometimes they may not be completely aware of it, or they're actually going beyond..."

Dave DeLeon: "Were's Corp Counsel when you need them?"

Sparks: "What it says is that the Board shall initiate or receive, and hear and investigate complaints."

Yamamoto: "Right. So it's alright for the Board to receive the complaint, but..."

Sparks: "...and investigate it..."

Yamamoto: "Yes, but an advisory opinion and the advisory opinion process is totally different than the complaint."

Sparks: "Okay, what's the culmination of a complaint then. Is there some kind of a report or recommendation?"

Yamamoto: "Could be a penalty."

Sparks: "But, if I asked you--should I vote on something or not--that's a different duty that they have. Is that your point? And, they're mixing them up somehow?"

Yamamoto: "Right. They did in one case. And, I think that led to that suit."

Chair Takabuki: "Right. And, what did the court end up saying on that -- they didn't have the jurisdiction?"

Yamamoto: "I'm not exactly sure. I don't think it was a complete decision."

Sparks: "The court?"

Chair Takabuki: "It went up to the Supreme Court..."

Sparks: "In Hokama's case?"

Dave DeLeon: "Yeah. They decided on a technicality--they didn't really go through the meat of the matter."

Yamamoto: "But, even in that particular case, it wasn't treated..."

Chair Takabuki: "They said that procedurally there were some problems with..."

Yamamoto: "Yeah, there were a lot of procedural problems with that."

Chair Takabuki: "Maybe we should look at that."

Sparks: "But there was some kind of decision about direct financial interest, the issue you can go ahead and vote when you're employed by the corporations at stake or something..."

Dave DeLeon: "The earlier one was against the mayor when she was a councilmember, and it was the opinion because her husband earned interest from Maui Land & Pineapple, she was not allowed to vote on anything about Maui Land & Pineapple, even though she was planning to vote against their interests."

Sparks: "Right. I remember that. So, that was the opinion from..."

Dave DeLeon: "So that's what got Sally (Raisbeck) going on this one. Goro actually initiated that one, so she went after Goro with this other thing, and they allowed it, and here we go."

Sparks: "Okay, but on that one you just cited about Linda, what she got from the Board of Ethics was an opinion. Is she obligated to follow that opinion?"

Yamamoto: "If the Board says you should not vote on this because you would be in a conflict situation, and if she chose to disregard, then if somebody filed a complaint, the whole process would be treated as a complaint. She would not be protected."

Sparks: "She might be subjected to a fine by the complaint process."

Yamamoto: "Right. If the Board said that there is no conflict, and she went ahead and voted on it because of its opinion from the Board, then even though a complaint was filed, that person would be protected."

Sparks: "This is going to be our 'super Ethics Board' that's going to take all the appeals from all the other places..."

Yamamoto: "You know Maile made a comment that I'm not quite sure about. When you folks were asking her about the disclosure forms, and the fact that the employer disclosed information would protect the individual from any conflict. Is that what she said? I caught the tail-end of the discussion..."

Chair Takabuki: "It would be okay."

Yamamoto: "It's okay because the person disclosed the information. What popped into my mind is that we have all these requirements for filing the disclosure forms, and the Board's responsibility is to review the financial disclosures. Just do an initial review and respond to the individual, to inform the individual whether there's any conflict or if there's a potential conflict."

Yamamoto: "Well, this is the way we used to do it before. The Board would write to the individual saying if you get involved or have to vote on a matter that deals with this area, please get back to us because there may be a potential conflict. If there's no conflict and no potential conflict that came out of this review, we'd inform the individual of that. But, because the individual disclosed the information, I don't think that automatically absolves an individual from any conflict. Because, that's why we probably had to meet every week to review. And, when she said not having another meeting before the 12th--wow!"

Sparks: "It's a new era, right?"

Chair Takabuki: "Once a month, yes."

Yamamoto: "But, we had a whole list of who was required to file, and if they filed, and if they didn't file we'd send follow-up letters and threaten them with nasty things."

Sparks: "In those days boards and commissions like this didn't have to file, did they?"

Yamamoto: "I forget. It was probably just elected and appointed. The review process is not necessarily that lengthy. You look at the disclosure form just to see if there's anything a person should be concerned about."

VI. NEXT MEETING DATE

The next meetings of the committee were scheduled for March 12 and March 25, 1992.

VII. OVERVIEW/DISCUSSION OF ARTICLE 13, SECTION 13-2 BOARDS AND COMMISSIONS

Discussion of this Article was postponed to a later date.

VIII. ADJOURNMENT

There being no further business, the meeting was adjourned at 5:24 p.m.

ACCEPTED:

Anne Takabuki, Chairman

Date