

LINDA CROCKETT LINGLE
Mayor
TELEPHONE 243-7855



91-29

OFFICE OF THE MAYOR
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII 96793

November 5, 1991

Mr. Robert Nakasone, Chairman
Charter Commission
P. O. Box 307
Kahului, Maui, Hawaii 96732

Dear Bob:

I would appreciate receiving copies of the minutes of your Commission meetings and Sub-committee meetings. I believe reviewing the minutes will help me to keep abreast of your work and ongoing process.

Thank you for your ongoing contribution to the community.

Sincerely,

A handwritten signature in cursive script, appearing to read "Linda", is written over the printed name.

LINDA CROCKETT LINGLE
Mayor, County of Maui

SL:jso
c:\letter\minutes



Council Chair
Howard S. Kihune

Council Vice-Chair
Patrick S. Kawano

Council Members
Vince G. Bagoyo, Jr.
Goro Hokama
Alice L. Lee
Rick Medina
Wayne K. Nishiki
Joe S. Tanaka
Leinaala Teruya Drummond



COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

Gwen Yoshimi-Ohashi
Director of Council Services

91-30

NOV 11 1991

November 8, 1991

Honorable Linda Crockett Lingle
Mayor, County of Maui
Wailuku, HI 96793

For transmittal to:

Mr. Robert Nakasone, Chairman
and Members
Charter Review Commission
County of Maui
Wailuku, HI 96793

APPROVED FOR TRANSMITTAL

Linda Crockett Lingle 11/13/91
Mayor Date

Dear Chairman and Members:

I request for your review and amendment to Section 10.4.c, at the end of the paragraph, to read:

"wages earned for work performed and not having decision making authority of a private business or interest shall not constitute a violation of this paragraph."

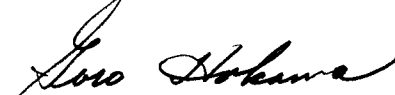
I have just received an opinion from the State Supreme Court on this subject matter. The Board of Ethics had rendered an advisory opinion to Sally Raisbeck on my conflict of interest under this Section which decision of the Board was ruled null and void by the Supreme Court. If the Board of Ethics' ruling was held to be valid because of the Charter language, many of our citizenry who work for subsidiaries of large corporations will not be able to fully serve on many of our appointed or elected positions.

I would further request of your Commission to consider language in Article 10 to provide for the legislative body to govern the conduct of its members like the Congress of the United States and the State Legislature. I do not feel an administrative agency should govern the legislative body.

Mr. Robert Nakasone, Chairman
and Members
Charter Review Commission
November 8, 1991
Page 2

I appreciate your consideration, and if there are any
questions, I would be happy to try and answer the questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Goro Hokama", written in dark ink.

GORO HOKAMA
Councilmember

52:GH:jmo

Justice Bob

91-31

ORDINANCE NO. 1945

BILL NO. 78 (1990)

A BILL FOR AN ORDINANCE AMENDING
TITLE 2 OF THE MAUI COUNTY CODE, ESTABLISHING
A NEW CHAPTER, PERTAINING TO THE SALARY COMMISSION

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Title 2, Maui County Code, is amended by
adding thereto a new chapter to be designated and to read as
follows:

"Chapter 2.42

SALARY COMMISSION

Section:

2.42.010 Other powers, duties, and functions.

2.42.010 Other powers, duties, and functions.
In addition to the powers, duties, and functions
established by chapter 5 of article 3 of the revised
charter of the county of Maui, the salary commission
shall, unless otherwise provided by law, determine
the compensation of the department head and first
deputy or first assistant of all county departments
enumerated in said charter, in accordance with such
principles, conditions and procedures as prescribed
by law."


SECTION 2. Chapter 2.40, Maui County Code, is amended by
adding thereto a new section to be designated and to read as
follows:

"2.40.210 Salary commission. There is
established a salary commission as provided by law.
(See article 3, chapter 5, charter and chapter 2.42
of this code.)"

SECTION 3. New material is underscored. In printing this bill, the County Clerk need not include the underscoring.

SECTION 4. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:


HAUNANI S. Y. LEMN
Deputy Corporation Counsel
County of Maui
salary/ords/c(cs)

WE HEREBY CERTIFY that the foregoing BILL NO. 78 (1990)


1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 21st day of September, 1990, by the following votes:

Linda CROCKETT LINGLE	Goro HOKAMA Chairman	Patrick S. KAWANO	Howard S. KIHUNE Vice-Chairman	Alice L. LEE	Ricardo MEDINA	Wayne K. NISHIKI	Veima M. SANTOS	Joe S. TANAKA
Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

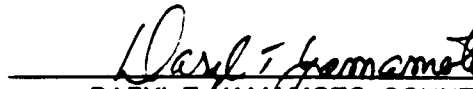
2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 21st day of September, 1990.

DATED AT WAILUKU, MAUI, HAWAII, this 21st day of September, 1990.

RECEIVED
1990 SEP 21 PM 3:20
OFFICE OF THE MAYOR



GORO HOKAMA, CHAIRMAN
Council of the County of Maui



DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 26th DAY OF September, 1990.



HANNIBAL TAVARES, MAYOR,
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 1945 of the County of Maui, State of Hawaii.

Passed First Reading on September 7, 1990.
Effective date of Ordinance September 26, 1990.



DARYL T. YAMAMOTO, COUNTY CLERK,
County of Maui

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 1945, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

County Clerk, County of Maui

SPECIAL CHARTER COMMISSION REPORT

BACKGROUND

The Special Charter Commission for the evaluation of the Department of Water Supply, County of Maui, was established by the appointment by the Mayor of the County of Maui and the confirmation by the County Council of its eleven members on the 20th day of February, 1987.

The Commission's initial meeting was held on the 15th day of April, 1987, at which meeting, John Hirashima was appointed the Chairman of the Commission. The Commission adopted Roberts Rules of Order for the conduct of its business and adopted a work schedule for the conduct of its business.

COMMISSION RECORD

The record of the Commission is as follows:

1. Minutes of Commissions Meetings. Meetings were held on the following dates and the minutes are reflected in the Commission Record as follows:

- a. April 15, 1987,
- b. May 20, 1987,
- c. July 15, 1987,
- d. July 29, 1987,
- e. August 12, 1987,
- f. August 27, 1987,
- g. September 4, 1987,
- h. September 23, 1987,
- i. September 30, 1987,
- j. October 14, 1987,
- k. October 28, 1987,
- l. November 18, 1987,
- m. December 16, 1987,
- n. December 30, 1987,
- o. February 10, 1988,

2. Committee Report from the sub-committee of the Commission concerning the investigation of water systems from other counties, comprised of Milton Howell and Pancho Alcon. This report is found in Commission Record,.(Appendix A).

3. Record from public hearings of the Commission held in Molokai on the 2nd day of December, 1987 Commission Record (Appendix B), and Wailuku on the 3rd day of December, 1987, Commission Record, (Appendix C). A public hearing was conducted in Hana on the 2nd day of December, 1987, but no testimony was offered.

4. Letters received by the Commission (independent of public hearing testimony or testimony at the Commission's meetings) Commission Record, (Appendix D) includes the following:

- a. Allan R. Sparks, letter dated July 8, 1987,
- b. Colin C. Cameron, Chairman and President, Maui Land & Pineapple Company, Inc., letter dated September 3, 1987,
- c. Arden G. Henderson, President, Maui Electric Company, letter dated September 9, 1987,
- d. Bernard W. Despins, President, Maui Contractors Association, letter dated September 28, 1987,
- e. Bert L. Hatton, Vice President, Land Administration and Planning, Amfac, letter dated October 9, 1987,
- f. Randolph G. Moore, President, Molokai Ranch Limited, letter dated September 15, 1987,
- g. Hannibal Tavares, Maui, letter dated December 16, 1987,
- h. Rick Medina (undated) submitted in mid December, 1987.

5. The Commission's report of its activities and recommendations.

COMMISSION WORK PLAN

The Commission adopted a work plan by which it pursued an investigation of the opinions of County officials concerning the Department of Water Supply and the need, if any, for organizational and structural changes for the department, an investigation of the opinion of community organizations, including professional organizations and major land owners, with regard to the same. The work plan of the Commission also included interviews with parties experienced in water systems, as well as data from other Hawaii Counties concerning their experiences with their own system of water administration. A copy of the work plan is included in the Commission Record as Commission Record, (Appendix E).

ANALYSIS OF PAST ADMINISTRATION

The Commission developed an analysis of the various activities of the Department of Water Supply and correlated the same to the different administrative heads of the Department and the structural organization at each time period. The analysis (as shown in Figure 1) reflects the following:

- 1. Since the 1950's the department has experienced five organizational changes as follows:

- a. Prior to 1955 - semi-autonomous,
- b. From 1955 to 1960 - county department,
- c. From 1960 to 1977 - semi-autonomous,
- d. From 1977 to 1983 - county department with the board of water supply retaining some power,
- e. Since 1983 it has been a county department with the board of water supply retaining no power.

2. Major agreements were enacted during the semi-autonomous organization, including the Central Maui source development and transmission joint ventures and the East Maui Irrigation Wailoa ditch agreement. These agreements have had a profound impact on the development of all Central Maui and have improved the reliability of upcountry water service.

3. Most of the significant development oriented rules were adopted by the Board of Water Supply with the Mayor's signature during the period 1977-1982 when the Board retained power to initiate rules. Such rules include source development fees, short-lived emergency rules limiting development in Central and West Maui and Kula special rules governing the issuance of water meters. Although highly unpopular at the time of enactment, these rules are now seen as generally beneficial to the people of the County of Maui.

4. All of the federal-mandated Safe Drinking Water Act projects were initiated by the Tavares administration. Although the legislation was enacted by Congress in 1974, it was not until August, 1977, that the state adopted its drinking water standards which mirrored the federal standards.

5. Various well projects outside of the Central Maui source development joint venture were completed since 1977.

6. The department has had a relatively high turnover in its directors. The two longest terms were held by Mr. Yoshiharu Tsuji, seven years, spanning a semi-autonomous and county departmental structure and Mr. Koichi Hamada, nearly eight years, all under a semi-autonomous structure.

OVERVIEW OF WATER MANAGEMENT SYSTEMS¹

Presently there are approximately 50,000 water systems serving the population of the U.S. Forty-four are publically owned and serve 80 percent of the population and the remaining 56 percent of the systems are investor owned and serve 20 percent of the population. Although investor owned water utilities are in the minority, their record of accomplishment are models in operations, service and management, according to the Amercian Water Works Association, a 42,000 member organization.

¹ American Water Works Association, Water Utility Management

Among publically owned systems, the vast majority among medium and larger communities are managed successfully under an "authority" system whereby a board or commission assumes management responsibilities. It appears to be an accepted fact that the more separated the control of the utility from the affairs of general government and politics, the greater probability of achieving maximum efficiency.

Compelling testimony was offered by Mr. Robert Chuck, immediate past president of the American Water Works Association and long-experienced in water resource development and management in Hawaii. In four years as an executive with the organization, he visited all 41 sections of the association, and because of a personal interest in water utility management, he took that opportunity to study the management systems of the communities he visited. He found many small communities having their systems managed by the city administration. These systems are characterized as being small, simple and generally without great capital needs. On the other hand, most larger water systems are managed by authorities. His opinion was that these systems were best served by long-term managers under an "authority" system.

ISSUES AND DECISION MAKING CRITERIA

The Commission adopted certain questions and issues upon which it would focus during its deliberations. The questions are contained in the Commission's work plan and can be summarized as follows:

1. Accountability to the general public for actions of the Department. Is direct accountability by election necessary or even appropriate in operating the water utility?
2. Long Range Planning. What system of management would most likely ensure the adequacy of long range planning?
3. The Position of the Water Director is Viewed as Critical in the Affairs of the Department. What system is likely to foster a continuity in management for the department?
4. Responsiveness and Efficiency. What system would enhance the qualities (responsiveness and efficiency) which mark successful utilities?
5. Financing of Current and Future Needs Require Sound Planning and a Commitment to Long-term Goals. What system would consistently provide for departmental financial needs?

The Commission deliberated on the question of the mandate on it posed by the 1982 Charter Commission. Page 24 of the Report of the Charter Commission of the County of Maui, October 18, 1982, states as follows:

As indicated earlier, the Charter Commission spent a great deal of time on this extremely important issue and concluded that a radical change to the present structure of the Department of Water Supply would best serve the interest of the people of the County of Maui. At the same time, however, the Commission was forced to accept the proposition that it might indeed be an error in proposing a shift from a stronger water board to a weak one. Therefore, it has proposed that a special charter commission be appointed to review the finances, operations, and rule making power of the Water Department and determine whether or not further changes are necessary.

The stated mandate appears to be the determination as to whether or not further changes in the financial, operational and rule making power of the department are justified. The mandate also appears to ask whether the 1982 charter commission erred in shifting to a weak water board.

The Commission concluded that the standard for their decision making process should focus upon whether the existing organization structure or alternative organizational structures were in the best interest for the efficient administration of the public water systems of the County of Maui.

DECISION OF SPECIAL CHARTER COMMISSION

The Commission has concluded that the 1988 county ballot should include a provision as to whether Chapter 11 of the Revised Charter of the County of Maui should be amended to provide for a semi-autonomous board of water supply. The proposed Chapter 11 would read as follows:

CHAPTER 11 DEPARTMENT OF WATER SUPPLY

Section 8-11.1. Organization. There shall be a department of water supply consisting of a board of water supply, a director, a deputy director and the necessary staff.

Section 8-11.2. Functions of the Department.

1. All water systems owned and operated by the county, including all county water rights and water sources, together with all materials, supplies and equipment and all real and personal property used in connection with such water systems shall be under the control of the department.

2. The department shall have full and complete authority to manage, control and operate water systems and properties used in connection with such water systems.

3. The department shall implement the county's general plan and community plans in the administration of its affairs. There shall be a long-range plan of the department which shall be subject to the approval of the county council, as provided by law.

4. The county council shall have the authority to issue general obligation bonds for the benefit of the department and may provide capital appropriations for the department.

Section 8.11.3. Board of Water Supply. The board of water supply shall consist of nine members who shall be appointed by the mayor with the approval of the council. The planning director and the director of the department of public works shall be non-voting ex-officio members of the board.

Section 8.11.4. Powers, Duties and Functions. The board of water supply shall:

1. Appoint, evaluate and remove the director of the department of water supply and fix the director's salary.

2. Have the authority to create and abolish positions;

3. Adopt rules and regulations which shall have the force and effect of law relating to the management, control, operation, preservation and protection of the water works of the county, as well as the establishment and adjustment of rates and charges for furnishing water; such rules and regulations shall be adopted as provided under § 8.11.8 below;

4. Adopt an annual operating and capital budget;

5. Have the authority to issue revenue bonds under the name of the board of water supply;

6. Have the authority to acquire by eminent domain, purchase, lease or otherwise, and to sell, lease, or otherwise convey real property in the name of the board of water supply;

7. Perform such other duties and functions as shall be prescribed by law.

Section 8.11.5. Director of Water Supply. The director of the department of water supply shall be appointed and evaluated by the board of water supply, and may be removed by the board of water supply. The director shall have a minimum of three years of experience in an administrative capacity, either in public service or private business, or both. The director or his deputy shall be a registered engineer.

Section 8.11.6. Powers, Duties and Functions. The director shall:

1. Recommend rules and regulations for the adoption of the board;

2. Administer the affairs of the department, including the rules and regulations adopted by the board and be responsible for the day-to-day management and control of all water systems of the county;

3. Prepare and implement long range capital improvement plans which have been adopted by the board;

4. Appoint a deputy director;

5. Prepare an annual operating and capital budget for the board's review and adoption;

6. Coordinate the affairs of the department with the mayor and the county council and submit an annual report concerning the department to the mayor and the council.

7. Perform such other duties and functions as shall be prescribed by law.

Section 8.11.7. Revenues. The revenues of the department shall be kept in a separate fund and shall be such as to make the department self-supporting.

Section 8.11.8. Approval of Rules. The adoption, amendment and repeal of all rules adopted pursuant to Subsection 8.11.4(3) shall be subject to the approval of the mayor. Upon approval by the mayor the proposed rule shall be submitted to the council. Within forty-five (45) days of receipt of a proposed rule, the council may by a two-thirds (2/3) vote of its entire membership disapprove the rule by resolution; in which case the rule shall have no force or effect.

TRANSITION PROVISIONS FOR AMENDED CHAPTER 11

1. If the voters of the County of Maui approve the proposed charter amendment, the charter amendment shall take full effect on January 1, 1989.

2. Existing Laws and Conflicting Laws. All laws, ordinances, resolutions and rules enforced at the time the amended chapter 11 takes full effect, and not in conflict or inconsistent with the amended chapter 11, are hereby continued in force until repealed, amended or superceded by proper authority. All laws which are inconsistent with the amended chapter 11 shall be superceded by the provisions of the amended chapter 11 at its effective date. All laws relating to or affecting the county or its departments, officials or employees, and all county ordinances, resolutions, orders and regulations which are in force when the amended chapter 11 takes full effect are repealed to the extent that they are inconsistent with or interfere with the effective operation of the amended chapter 11.

The significant changes proposed by this commission include:

1. The appointment and supervision of the director of the Department of Water Supply by the Board of Water Supply rather than the Mayor of the County of Maui;
2. The adoption of rules and regulations relating to the management and control of the waterworks of the county, as well as the establishment and adjustment of water rates by the board of water supply, through the mayor, with a veto power over such rules in the county council (currently the Board of Water Supply has no role in the adoption of rules and regulations);
3. The adoption of annual operating and capital budgets by the Board of Water Supply rather than the council of the County of Maui.

The mandate given to this commission by the 1982 charter commission leads ultimately to the question as to who should make what decisions concerning the operations of the Department of Water Supply of the County of Maui. The matrix is not necessarily complex and can be articulated in a series of four questions:

1. Appointment and Supervision Responsibilities. Who shall appoint, supervise and evaluate the director of the Department of Water Supply?
2. Policy Setting Responsibilities. Who should have the ultimate authority to adopt rules and regulations which have the force and effect of law for the operations of the department and the setting and adjustment of water rates?
3. Adoption of Budget. Who shall have the responsibility in adopting and overseeing operating and capital budgets for the department?
4. Long Range Planning. Who shall have the responsibility to develop, implement and monitor the long range plans of the department?

There was never any question as to who should manage the department. The director of the department must have full powers of management. The real question was: what system of organization is more beneficial for a director of the department to manage the department? The question of operational and financial policy formulation (formulation of rules and regulations and adoption of the budget) was obviously the central focus of the commission's inquiry. Clearly, the

party who creates operational and financial policy should be the party who appoints and oversees the management of the department. No executive should serve more than one master.

The information before the commission became persuasive that operational efficiency is fostered by a separation of the department from the affairs of general government. The commission believes that such a system leads to greater efficiency in decision-making, encourages continuity of management, and fosters the institution and monitoring of long range planning.

The commission has been troubled by questions of accountability. Elected officials logically advocate that the electorate should maintain the final decision with regard to accountability and responsibility. Their position is that a system providing for an independent entity, not responsible to the electorate, lacks the requisite checks and balances which are the corner stone of our government. Much of the private sector spokesmen advocated an independent system -- one step removed from the larger body of governmental affairs. This view point stresses the increased attention and specialization that an independent body can receive if not made a component of the larger web of a bureaucracy. Obviously, each view point has merit and no one system ensures efficiency or operational success.

The commission believes that a system can be developed with adequate independence and with the requisite accountability to serve the best interest of the public. The commission has attempted to maintain features of accountability that exist under the present system and, at the same time, create an independence it believes is productive for the efficiency of the system. The following matrix of the functions shows the shared level of responsibility and the resultant accountability under the commission's proposal:

COMMISSION'S PROPOSAL

<u>Functions</u>	<u>Current System</u>	<u>Levels of Shared Responsibility</u>	<u>Singular Responsibility</u>
Appointment and supervision of Director	Mayor		Board of Water Supply
Adoption of Rules and Regulations	Mayor - Council veto	Board of Water Supply, Mayor, Council veto	

Adoption of
Budget

Mayor -
Council

Board of Water
Supply - Council
supplemental
capital appropria-
tions, general
obligation bonds

Long-Range
Planning

Mayor -
Council

Board of Water
Supply, Mayor,
Council

The commission was impressed with regard to the accountability in other Hawaii counties. Officers from other Hawaii county water systems expressed their opinions that adequate accountability was provided through the appointment and removal process of board members, the power of persuasion of the mayors and council members, and the correlation between water operations and infrastructure development and each of the county's general plans. The commission found that accountability and responsibility were not issues of concern in the jurisdictions contacted by the commission.

The recommendations of this commission provide a substantial degree of accountability as follows:

1. The department must implement the county's general plan and community plans in the administration of its affairs. It may not proceed on its own agenda, while ignoring the county's land use plans for water source development and distribution.

2. The department must prepare a long range plan which must be approved by the county council, as provided in the state water code.

3. The adoption of rules governing the operations of the department, as well as those setting rates and charges for furnishing water, are subject to the approval of the mayor. The county council has the opportunity to veto such rules within a forty-five (45) day period from the presentation of the rules to the council.

4. The water director must coordinate the affairs of the department with the mayor and the council and submit an annual report concerning the department to the mayor and the council. Such coordination would be especially critical in determining land use policies by the administration and the council.

The commission believes that these features provide the necessary accountability and responsibility and would prevent a "government outside of government," as some have feared.

There is no question that the continuity of management and the quality of the person who will take the position of water director are primary factors in providing an efficient department. The commission has concluded that it is more likely that a semi-autonomous department would attract a greater pool of qualified candidates from both the private and public employment sectors for the position of director. It appeared clear to the commission that a limited appointment (co-terminus with the mayor) would not be an advantage in attracting candidates who seek professional careers in water service administration. Also, because of the importance of continuity of management and its influence in long term planning and the implementation of such plans, it appeared significant to the commission that a system where an executive position would transcend one administration to another would best serve these objectives. The commission was impressed that in other Hawaii counties there have been greater longevity in their executive positions than within the County of Maui. Kazu Hayashida is the fifth manager in the past 58 years of the Honolulu Board of Water Supply. William Sewake is the fourth manager in the past 37 years of the Hawaii County Water Department, and Roy Sato is the 2nd manager in the past 33 years of the Kauai Board of Water Supply. The evidence is impressive that the semi-autonomous nature of the entity results in greater continuity of management and enhances the opportunity for long term professional careers in the field.

It is worthy to note that the commission appointed a special committee, consisting of Dr. Milton Howell and Pancho Alcon, to travel to other counties (Honolulu, Kauai and Hawaii) to determine the attitudes of the mayors and council chairmen concerning a semi-autonomous management of their water systems. Mayor Fasi, Mayor Kunimura and Mayor Carpenter, as well as Council Chairmen Morgado, Kouchi, and Yamashiro, unanimously endorsed the semi-autonomous system of management and were not in favor of any changes to the existing organizational structure concerning the water departments for their counties. It is interesting to note that prior to becoming the chief executives of their counties, Mayors Kunimura and Carpenter had maintained the position that the water department should become a part of county administration. After taking the position as chief executive of their respective counties, both changed their views and now strongly support the semi-autonomous system.

RECOMMENDATIONS

The Special Charter Commission clearly believes that a semi-autonomous water department would best serve the County of Maui over a long period of time. Actual performance at any point in time would depend on the situation at hand, as well as the individuals involved. The commission did not take lightly testimony supporting the present system, especially testimony relating to accountability to the general public. Democracy is the foundation of American government; however, this does not mean that every individual segment of government is best served by direct management of elected officials.

The commission was concerned by the very close proximity of the next county-wide charter commission which will be appointed in 1991. That commission's work will be performed primarily in 1991 with its ballot measure voted on in the 1992 elections. Whatever is then decided would take effect on January 1, 1993. The commission's concerns deal with the short time between the 1988 ballot measure and the time the 1991 commission initiates its deliberations. Only two and one-half years will have passed between new measure taking effect in 1989, if any, and the start of the new commission's work; clearly an inadequate amount of time to judge the effectiveness of changes proposed by this commission.

There was considerable discussion on whether or not this Special Charter Commission should indeed recommend changes at this time, in light of the close proximity of the next charter commission.

If the measure of the Special Charter Commission is accepted by the voters and takes effect in 1989, the commission strongly recommends that the 1991 commission allow its work to stand. The department has undergone many organizational changes in its history and has not been able to stabilize and operate on a long-term organizational basis for the benefit of the county. The commission did not want to participate in the lack of any stability, yet the commission felt it must recommend those changes which would best serve the people of the County of Maui in the long run.

The Special Charter Commission believes that the 1982 charter commission was justified in its concern that "it might indeed be in error in proposing a shift from a stronger water board to a weak one." The Special Charter Commission recommends a change of the present departmental system to a semi-autonomous system with specific features to ensure sufficient public accountability. We have concluded that this is in the best interest of the people of the County of Maui.

Respectfully submitted,

GARRET S. ABE

Dated: _____

Domingo Alboro Sr.

DOMINGO ALBORO, SR.

Dated: 2/18/88

Irene Bodden

IRENE BODDEN

Dated: Feb. 18, 1988

J. C. Franco Jr.

JOSEPH S. FRANCO JR.

Dated: Feb. 19, 1988

John Hirashima

JOHN HIRASHIMA

Dated: 2/19/88

Milton M. Howell M.D.

MILTON M. HOWELL, M.D.

Dated: 12 Feb. 1988

Shinsou Kato

SHINSO KATO

Dated: Feb. 17, 1988

Lokelani Lindsey

LOKELANI LINDSEY

Dated: 2-19-88

L. Douglas MacCluer

L. DOUGLAS MACCLUER

Dated: Feb 18, 1988

Shigeto Murayama

SHIGETO MURAYAMA

Dated: 17 FEB 88

Pancho Alcon

PANCHO ALCON

Dated: 2-17-78

Special Charter Commission Report
0036j

Section 8-5.4 Board of Variances and Appeals. The board of variances and appeals shall consist of nine members appointed by the mayor with the approval of the council.

In accordance with such principles, conditions and procedures prescribed by the council, the board of variances and appeals shall:

1. Hear and determine applications for variances from the strict application of [any general plan] the provisions contained within any zoning, subdivision or [building ordinances] sign ordinance. The board shall hold a public hearing prior to ruling on a variance application and shall issue findings of fact and conclusions of law on decisions granting or denying variance applications.
2. Hear and determine appeals alleging error from any person aggrieved by a decision or order of any department charged with the enforcement of zoning, subdivision and building ordinances; provided, that the council may by ordinance confer to another county agency the authority to hear and determine appeals from the decisions of the building official in the administration of the county of Maui building code, plumbing code, electrical code and housing code, and from any order made by the county fire chief in the administration of applicable state law and the county of Maui fire code, and the director of water supply in the administration of the rules and regulations of the department of water supply, relating to matters involving any denial of the use of new or alternate materials, types of construction, equipment, devices or appliances. (Amended 1988)
3. Hear and determine all other matters which the board may be required to pass on pursuant to ordinances.
4. Adopt rules of procedure for the conduct of the board's business.

COMMITTEE A
CHARTER COMMISSION
MEETING MINUTES
NOVEMBER 2, 1991
COUNCIL COMMITTEE ROOM

91-34

Present

James Cockett
Dolores Fabrao
Robert Nakasone (Charter Commission Chair)
Allan Sparks (Committee Chair)
Susan Nakano-Ruidas (Staff)

Guest

David DeLeon

I. CALL TO ORDER

Committee Chair Sparks called the meeting to order
at 9:15 a.m.

II. PUBLIC TESTIMONY

None.

III. OVERVIEW/DISCUSSION OF COMMUNICATION 91-0 - ARTICLES I - VII

Committee Chair Sparks noted that this meeting was to be a
"study session" to come up with ideas and options for the
first seven Articles.

A. Articles I and II

No changes anticipated.

B. Article III

1. Section 3-1 - Number of County Council Members

Election At-Large or By District seems to be the
biggest issue. According to local government
comparative studies done on the mainland, district
representation works where the population distribution
is pretty even. However, none of the wisdom of these
studies prove very helpful with geographically unique
communities, which may prove hard to take care of under
the one-man, one-vote rule.

The studies did indicate that there is not a big
distinction in actual practice between the AT LARGE
and DISTRICT representation. A city/county-wide
view is maintained by representatives no matter
which election system is used.

Advantages and disadvantages of the two systems are:

a. At-Large - ADVANTAGES

DISADVANTAGES

- County-wide view
- Residency Requirement
- Offers citizens more
people to go to with
their problems
- Larger pool of candidates
- Campaign costly

b. District - ADVANTAGES

DISADVANTAGES

- Elections are cheaper
and easier to run
- Increases the variety
of ethnic groups
- More democracy vs
less efficiency
- Dollars taken to run
MAY be less influential
- Possibly narrower view
- Problem of splitting
into equal districts
- More likely to provide
more individual services
to constituents vs whole
county
- May give money interest
opportunity to buy election

CHARTER COMMISSION/COMMITTEE A
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B. Article III (Continued)

c. Mixed District/At-Large System

A majority of the Council would be elected by district with the rest elected At-Large. Divisions could be any numbers feasible:

- 8 District/1 At-Large
- 7 District/2 At-Large
- 6 District/3 At-Large
- 5 District/4 At-Large

A major problem with this system would be the "fairness" to all candidates. Although candidates choose the race they run in, it would be more costly to run At-Large than to run by District.

d. Council City Manager Concept

Advantages to this system are that the City Manager/Chief Executive Officer is hired by the Council; the Mayor would be the 9th decision-making member of the Council; there would be a professional administrator to run the County; and the potential for infighting/squabbling between the Council and Administration would be eliminated.

e. RECAP

There are no major problems with the system as it exists now except that there is no need for a no-residency requirement seat since all Council is currently elected At-Large. Also, given the increase in population in other parts of the island, there could be one less seat in Central district. By maintaining three seats in Central, it discourages direct "record comparison" competition, and brings up the question of community representation (ie. Wailuku/Kahului).

CHARTER COMMISSION/COMMITTEE A
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e. RECAP (Continued)

It was suggested that the following options be prepared and presented at public informational meetings:

1. Keep the At-Large System we have now but adjust it so there is not a no-residency seat and all candidates must run with residency requirement.
2. Mixed Option – District/At-Large (Committee Chair Sparks will work out feasible numbers).
3. True Districts (Committee Chair Sparks will work up maps with possible divisions).

NOTE: Along with the explanations of each type of system, Committee Chair Sparks is to develop pros and cons of each.

2. Section 3-2 – Terms of Office

Committee may want to look into going from 2-year term to 4-year term, or into staggered terms.

3. All committee members were asked to think about the various options available and to be ready to brainstorm at the next meeting.

IV. OTHER BUSINESS

None.

V. NEXT MEETING DATE

The next meeting of this committee will be on November 14, 1991 at 2:00 p.m. in the Council Committee Room.

VI. ADJOURNMENT

There being no further business, the meeting was adjourned at 11:52 a.m.

APPROVED:

Allan Sparks, Comm. Chair 11/14/91
Allan Sparks, Committee Chair Date

91-35

COMMITTEE A
CHARTER COMMISSION
MEETING MINUTES
NOVEMBER 14, 1991
COUNCIL COMMITTEE ROOM

Present

James Cockett
Dolores Fabrao
Annette Mondoy
Allan Sparks (Committee Chair)
Sue Nakano-Ruidas (Staff)

I. CALL TO ORDER

Committee Chair Sparks called the meeting to order at 2:08 p.m.

II. APPROVAL OF MINUTES

The minutes of the November 2 Committee meeting were approved with revisions and the provision that they be retyped before submission.

III. PUBLIC TESTIMONY

None.

IV. OVERVIEW/DISCUSSION

A. COMMUNICATION 91-0. ARTICLE 3

1. District Scheme - using census data, the numbers worked out to pretty reasonable districts. Of course, Lanai and Molokai do not fit this district scheme at all. It may be that councilmen could be too narrowly focused and that there is only one person to go to if problems exist. Population per councilman would be around 14,300 in this scheme, and it would necessitate combining Lanai and Molokai with portions of Central Maui (areas closer in characteristic with them).

CHARTER COMMISSION/COMMITTEE A
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NOVEMBER 14, 1991
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1. District Scheme (Continued)

Pool of candidates for Lanai and Molokai would expand if combined with another area of Maui, and the weight each island carries would be increased in direct proportion to the percentage of their population to the 14,300+. One problem might be the "attractiveness" of these districts to potential candidates. (With our present system, all nine council members (in theory) should be responding to Lanai and Molokai right now.)

NOTE: Preference of Lanai member is to leave Lanai the way it is now. Preference of Molokai member is to link up with a part of Maui.

To date, precinct information has not been received from Clerk's office, but Committee Chair Sparks will look at those numbers as well when "assigning districts."

2. Mixed District/At-Large - Could be the answer with either 7/2 or 6/3 split, although some of the districts could be even more "weird" than the straight district scheme.

A major problem with this system would be the "fairness" to all candidates. Although candidates choose the race they run in, it would be more costly to run At-Large than to run by District.

3. Council City Manager Concept - Although the City Manager should be an unbiased "non-political" person, one concern with this system is that the CEO/manager is accountable directly to the Council, opening the possibility to "faction control." And, there are less checks and balances with this system.

CHARTER COMMISSION/COMMITTEE A
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3. Council City Manager Concept (Continued)
Another disadvantage to this system would be the major need to re-educate the voters—a BIG educational challenge.
4. RECAP - Current system we have now is not "that bad." There may be something we can do about conflicts between mayor and council, which seem to be the result of an over check and balance system.

It was agreed by all committee members that it would not recommend "leaping" into the City Manager concept.

All three of the options above will be worked up on maps and explained at the Lanai meeting on December 2.

B. COMMUNICATION 91-0. ARTICLE 3-2

It was agreed to recommend the term of council members be changed to 4 years. It is not only costly to run elections every two years, but the second year of the term is generally not as productive due to elections coming up.

Discussion on limiting number of terms of office for council members resulted in the following suggestions:

- a. two 4-year terms (matching the mayor's)
- b. three 4-year terms
- c. no limit on terms (let the voter decide)

NOTE: Big Island changed their terms of office for council to two years because it was tied to a combined package which they thought would not pass.

CHARTER COMMISSION/COMMITTEE A
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C. COMMUNICATION 91-0. ARTICLE 7

The committee agreed that it supports the "strong Mayor" concept and favors giving the Mayor the responsibility to put the team together, and let them run the Departments.

V. OTHER BUSINESS

None.

VI. NEXT MEETING DATE

The next meeting of this committee will be on November 21, 1991 at 2:00 p.m. in the Council Committee Room.

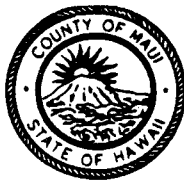
VII. ADJOURNMENT

There being no further business, the meeting was adjourned at 3:53 p.m.

APPROVED:

Allan Sparks, Chairman 11/21/91
Allan Sparks, Committee Chair Date

LINDA CROCKETT LINGLE
Mayor



PAUL MANCINI/
SUE RUIDAS
11.21.91

GUY A. HAYWOOD
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 243-7740

91-36

RECEIVED

NOV 20 1991

WRIGHT & KIRSCHBRAUN

November 18, 1991

Debra K. Wright, Esq.
6 Central Avenue
Wailuku, HI 96793

Dear Ms. Wright:

RE: CORPORATION COUNSEL OPINIONS

Per your request, enclosed are Corporation Counsel Opinions ("Opinions").

Specifically, you requested Opinions issued by this office in the last five years pertaining to the Charter Commission. I reviewed the files up to the 70's, and these are the only Opinions that refer to the Charter Commission.

If you have any questions, feel free to contact me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maile A. Lu'uwai".

MAILE A. LU'UWAI
Deputy Corporation Counsel

MAL:epg
b:\memos\opinions



DEPARTMENT OF THE CORPORATION COUNSEL

County of Maui
WAILUKU, MAUI, HAWAII 96793
TELEPHONE 244-7740

August 3, 1984

Honorable Abraham Aiona, Chairman
Special Committee on Charter Review
County Council
County of Maui
Wailuku, Hawaii 96793

SUBJECT: DISTRICT REPRESENTATION

Dear Mr. Aiona:

This is in response to your request for an answer to the following hypothetical question regarding makeup and election to the Maui County Council:

"Whether, under the Charter amendments proposed by the Charter Reapportionment Commission, representation from a district is denied when no candidate from the district runs for a council seat?"

Our answer is in the affirmative, e.g., the geographical district concerned would be without an elected councilman representing the geographical area concerned.

While not expressly provided for in the said commission's proposed amendment to Sec 3-1 of the Charter, such a result would be consistent with the intent of the commission in expressly providing that should "no candidate possess the necessary requirements of residence and domicile in any one of the geographical areas" then that district shall be "unrepresented" by a specified councilman.

The underlying philosophy is apparent that unless the candidate is very clearly connected with the geographical area by at least a year's residence/domicile, the purpose for having district representation is not achieved. In such event, the members elected at large will be relied upon to see to the needs of that geographical

Honorable Abraham Aiona, Chairman
Special Committee on Charter Review
Page 2
August 3, 1984

district. Putting it another way: Under the commission's scheme, a council candidate who was domiciled in a particular district for 364 days would still not be eligible to be designated as the representative of such district*--accordingly, if no one files for the district seat, there is even less reason to give the people of that district a specifically designated representative, assuming the commission's philosophical approach is applied.

Very truly yours,

DEPARTMENT OF THE
CORPORATION COUNSEL


FRED W. ROHLFING
Deputy Corporation Counsel

FWR:cm

APPROVED:


H. RODGER BETTS
Corporation Counsel

* Note, however, that under the commission's scheme while not specifically designated as the representative of a geographical district a successful at large candidate who is, in fact a resident in such a district, though for less than a year, is in effect a de-facto representative of the area.



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII 96793
TELEPHONE 244-7740

July 14, 1980

Mr. Goro Hokama, Councilman
Council of the County of Maui
200 South High Street
Wailuku, Maui, Hawaii 96793

Dear Councilman Hokama:

This is in response to your request for an opinion as to the legality of the seventeen amendments proposed to be made to the Charter of the County of Maui.

In reviewing the proposed amendments, we have identified three areas of particular concern: (1) the durational residency requirement for elected officials; (2) certain proposed changes respecting the office of the managing director; and (3) the amendment which would require that rules and regulations promulgated by County agencies be enacted as ordinances.

Durational Residency Requirements

The proposed amendments to Charter Sections 3.3 and 7.2 would establish ninety-day durational residency requirements for persons seeking election to the offices of councilman and mayor.

Although the Supreme Court of Hawaii struck down a durational residency requirement for persons seeking public employment generally in York v. State, 53 H. 557, 498 P.2d 644 (1972), it upheld a three-year durational residency requirement for election to the State House of Representatives

Mr. Goro Hokama, Councilman
Page Two -
July 14, 1980

in the case of Hayes v. Gill, 52 H. 251 (1970), holding that such a residency requirement had a rational basis. The Court also indicated that, in its view, the requirement would pass the stricter "compelling interest" test.

Based upon the foregoing, we are of the opinion that these proposed amendments to the Charter would pass muster and be held valid. (See Opinion No. 80-2 which is attached.)

Amendments Respecting the Managing Director

One of these amendments would have the effect of requiring Council approval of the mayor's appointment of the managing director. This particular aspect of the amendment, in our view, merely raises policy questions and would not be violative of law.

However, other portions of the proposed amendment to the section respecting the managing director do pose legal problems. The language which expressly exempts the managing director from civil service is deleted; the position of managing director is placed in the office of the mayor.

The effect of placing the position in the office of the mayor is to continue the exemption of the position from civil service, but the exemption of the managing director from civil service now becomes a function of Section 76-77(1), HRS, which excludes such a position, but states:

"(1) Positions in the office of the mayor, but the positions shall be included in the position classification plan."

The position classification plan is the logical arrangement by civil service authorities of classes of positions. Salary ranges are assigned to positions in the plan and they are compensated accordingly.

While it is a question of fact which I cannot answer at this time as to how the managing director's position would

Mr. Goro Hokama, Councilman
Page Three
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be classified and what salary range would be assigned to it and whether such a position would fit at all within the existing position plan, it is clear that the function of setting the amount of salary of the managing director would no longer be a function of the Council but would be a function of position compensation pursuant to Chapter 77, HRS. This would have the legal effect of rendering that portion of proposed Section 6.5 of the Charter respecting the managing director which states, "The salary of the managing director shall be established by ordinance," illegal.

While the funding of the position would be by ordinance, the fixing of the amount of compensation to be paid the position would be done as part of the establishment of the position compensation plan under Chapter 77, HRS. However, the approval of the establishment of a supergrade for the position could be by ordinance. Section 77-13, HRS.

The Amendments Which Would Require Rules and Regulations to be Enacted as Ordinances

This amendment appears in the proposed amendment to Charter Section 13-10.

The proposal in relevant part, states:

"All rules and regulations having the force and effect of law . . . shall be approved by the mayor and enacted by ordinance prior to going into effect."
(Emphasis added.)

The Charter of Maui County which became effective on January 2, 1969, provided, in relevant part at Section 13-10:

"All rules and regulations having the force and effect of law adopted by any board, commission or administrative head of a department must first be approved by the council and the mayor prior to going into effect"

Mr. Goro Hokama, Councilman
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On February 5, 1976, Attorney Paul Devens advised the then existing Charter Commission as follows:

"It does not appear that the Administrative Procedure Act in any way interferes with the county's executive, legislative and administrative structure and organization and therefore is not violative of the constitutional provision governing county charters. On the other hand, it does set forth a scheme governing administrative procedures with such completeness so as to preempt this area of concern, leaving nothing to the counties to act on. In short, the APA is a statute of general application to both state and county agencies and does not interfere with the protection given to county charters with respect to their administrative, executive and legislative structure and organization." (Emphasis added.)

Apparently, as a result of Mr. Deven's advice, the requirement for Council approval of rules and regulations was omitted from the language of the present Charter.

In the proposed amendment, we again find the requirement, although in the proposal, Council approval would take the effect of enactment of the rules by ordinance.

There are serious legal problems with this amendment.

Under Chapter 91, HRS, agency rules become effective when they are approved by the mayor and filed with the Clerk. The proposed amendment would add to the above requirement, that prior to becoming effective, such rules and regulations must also be enacted as ordinances by the Council. This is an inconsistency which would invalidate the proposed Charter amendment if the Administrative Procedure Act is regarded as dealing with a matter of statewide concern.

Although counties in Hawaii have been given the power to adopt charters delineating therein the structure of county government and enumerating the powers and functions

Mr. Goro Hokama, Councilman
Page Five
July 14, 1980

of each county agency, the Legislature has expressly reserved under Section 50-15, HRS, the power to enact all laws of general application throughout the state on matters of statewide concern and interest. HGEA v. County of Maui, 59 H. 65 (1978).

The issue to be resolved in the instant inquiry is whether the Hawaii Administrative Procedure Act is a law on a matter of statewide concern and interest.

Clearly it is.

At Vol. I, Proceedings of the Constitutional Convention of Hawaii of 1968, at page 229, which was cited at length in the HGEA decision and relied upon by the Court in reaching its result, it is made unmistakably clear that the Administrative Procedure Act was a law which could not be eroded by Charter. The report states, in relevant part:

"In prescribing the area within which a charter shall be of superior authority to a statute the proposal is similar to the model provision recommended by The American Municipal Association. This model provision was adopted by South Dakota in 1962. It was the basis of Proposal No. 241, introduced at the request of the Hawaii State Association of Counties.

"Your Committee omitted from the draft presented by Proposal 241 the words 'personnel' and 'procedure.' The word 'personnel' was omitted because your Committee was convinced that the legislature should not be deprived of the power to enact, and maintain in effect, laws such as Act 188, S.L.H. 1961. Under the committee proposal, no charter provision could supersede Act 188, S.L.H. 1961, unless the legislature so provided. Moreover, any delegation by the legislature of power as to personnel matters will not be irrevocable.

"The word 'procedure' was omitted in order to preserve the authority of statutes such as the Administrative Procedure Act." (Emphasis added.)

Mr. Goro Hokama, Councilman
Page Six
July 14, 1980

Based upon the foregoing, we are constrained to advise that the proposed Charter amendment would be in conflict with the Administrative Procedure Act and would be illegal.

The proper approach to have been taken in attempting to gain Council control over certain rule-making functions of certain agencies would have been (to the extent it is within County power to do so) to withhold totally the rule-making authority from these agencies. However, the approach taken, an effort to modify the procedure by which rules become effective, runs afoul of the preemptive procedures established in the Administrative Procedure Act.

In the foregoing analysis, we have taken the proposed amendment at face value as applying to rules and regulations promulgated by agencies. We are, however, aware that, because of a latent inconsistency in the wording of the amendment, it arguably achieves the rather startling effect of abolishing all rule-making functions in the County of Maui. This is so because rules which are adopted as ordinances are no longer rules; they are ordinances. See Sections 91-1(4), HRS, defining "rule" and Section 91-1, HRS, defining "agency."

This reading, however, does violence to the apparent intent of the amendment and runs into the further problem that there are subjects with regard to which the Charter simply cannot abolish the rule-making function. The area of personnel rules and regulations is the primary example, of course, because that matter was litigated in the HGEA case. Other suspect, but as yet unlitigated areas, include the rules made pursuant to Section 437-6, HRS, respecting the motor vehicle industry, Section 287-2, HRS, respecting motor vehicle safety, and Section 286-103, HRS, concerning driver licensing.

The concern here is not just that the rules may deal with matters of statewide concern; there is also concern that statutes on matters of statewide concern confer the rule-making authority on an administrative agency or officer not on the County's legislative body.

Mr. Goro Hokama, Councilman
Page Seven
July 14, 1980

We have not found problems with the other proposed amendments not discussed herein. However, if there are other areas of concern to you which I have neglected to consider to your satisfaction, please let me know and we will consider them further.

Most sincerely,

DEPARTMENT OF THE
CORPORATION COUNSEL

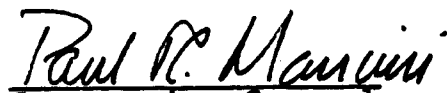


SONIA FAUST
Deputy Corporation Counsel

SF:jkm

Enclosure

APPROVED:


Corporation Counsel
County of Maui

Sarah E. Sykes

November 30, 1991

91-37

Maui County Charter Commission

ATTN: Mr. Robert Nakasone

P.O. Box 307

Kahului, Maui

Hawai'i 96732

Dear Mr. Nakasone and Members of the Commission,

I read with great interest recent newspaper articles about your review of Maui County's Charter. While there are certainly many innovative suggestions being considered, I should like to offer an old idea.

Sub-units of government within a county are not uncommon on the Mainland and in other countries. Townships, in particular, have much to offer in terms of solving some of the problems Moloka'i encounters. Township units could also resolve some of the problems inherent in unique lifestyles island-to-island within Maui County, and even on the Island of Maui alone.

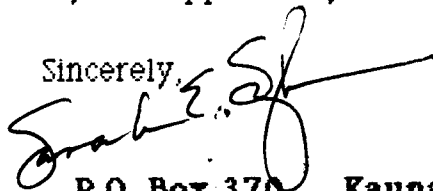
Hana, Lahaina, Lanai, Moloka'i each as their own township within the county could be eligible for separate and additional federal, state and private funds, primarily because of their unique make-up. This sort of solution could reduce the revenue distribution burden for county-wide programs, absorbing some of the CIP costs as well as training and manpower development costs.

Maui County faces a tremendous financial burden in the next few years as remedial infra-structure needs are met. Establishing some of the poorest areas, the most needy areas, and the most politically sensitive areas as townships in their own right could greatly reduce that burden for the County as a whole.

Much information about townships has been researched and applications for Moloka'i already explored. If you have any interest in pursuing this solution, please let me know, and I'll help if I can.

Sorry this is a bit late in the process, but we live half the year in Wailau Valley on Moloka'i's north shore: no phone, no paper, no mail, etc. This is my first opportunity to comment. Thanks for your time.

Sincerely,



P.O. Box 370

Kaunakakai, Hawaii 96748

808-553-3831

Sarah E. Sykes

December 17, 1991

Maui County Charter Commission
P.O. Box 307
Kahului, Maui
Hawaii 96732

Dear Mr. Nakasone and Members of the Commission,

Thank you so very much for taking the time to visit Moloka'i personally to listen well to even the very few people who came to comment on the Charter.

As I said that evening, it is possible to grant some autonomy, and therefore some responsibility, to unique areas within Maui County through changes in the Charter creating townships... or alternatively, creating real, functional neighborhood boards. The best option, however, for increasing funding sources, is with townships.

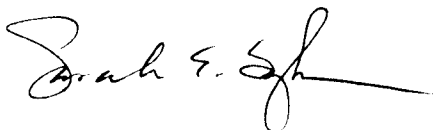
The State of Hawai'i-Department of Business and Economic Development did do a study within the last two years on greater self-governance possibilities for Moloka'i. I've been trying to track down their written report for the last two weeks. I'm still working on it, but had wanted to include it with this initial information. If it exists, I will get it to you.

Townships can start with few functions, and grow as necessary. Since they are served by an elected volunteer board, there are few initial costs. They are generally geographically delineated. All of this serves Moloka'i, Hana, Lanai, Kihei, etc. quite well. The enclosed information should be of some help in examining options.

Separately, may I again firmly state that I oppose at-large districts without residency requirements. In fact, as it works now, however poorly at times, it works as well as it can considering the unique problems of equalizing representation among three islands as equitably as practicable.

Finally, it really would be great to Sky-Bridge public hearings and council sessions. Truly interactive communication is the key to the greatest community participation.

Thanks again for coming to Moloka'i!



P.O. Box 370 Kaunakakai, Hawaii 96748 808 552 2921

Sarah E. Sykes

November 30, 1991

Maui County Charter Commission
ATTN: Mr. Robert Nakasone
P.O. Box 307
Kahului, Maui
Hawaii 96732

Dear Mr. Nakasone and Members of the Commission,

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Hana, Lahaina, Lanai, Moloka'i each as their own township within the county could be eligible for separate and additional federal, state and private funds, primarily because of their unique make-up. This sort of solution could reduce the revenue distribution burden for county-wide programs, absorbing some of the CIP costs as well as training and manpower development costs.

Maui County faces a tremendous financial burden in the next few years as remedial infra-structure needs are met. Establishing some of the poorest areas, the most needy areas, and the most politically sensitive areas as townships in their own right could greatly reduce that burden for the County as a whole.

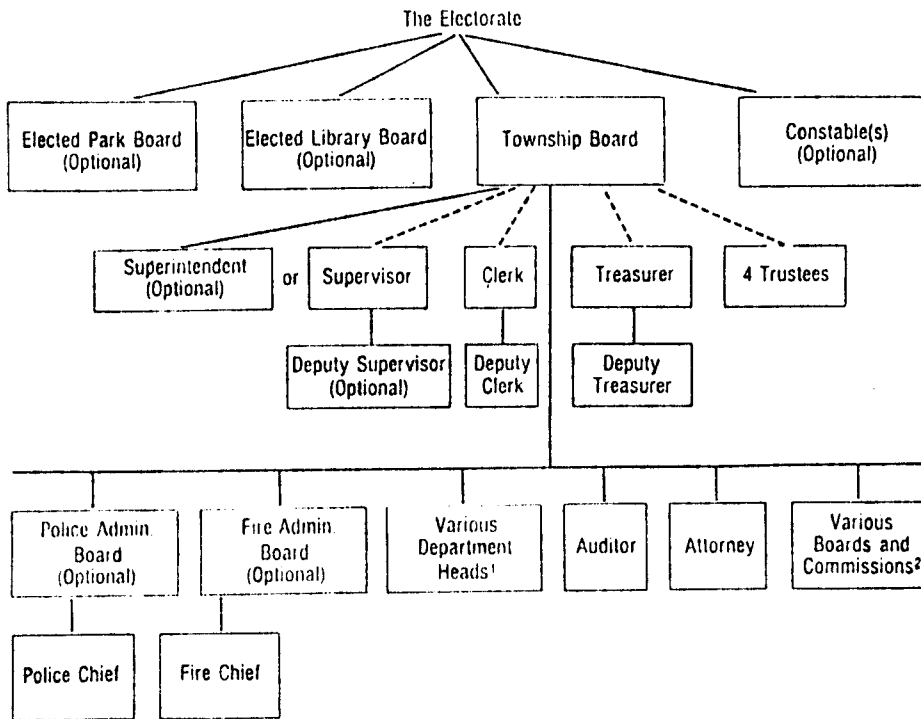
Much information about townships has been researched and applications for Moloka'i already explored. If you have any interest in pursuing this solution, please let me know, and I'll help if I can.

Sorry this is a bit late in the process, but we live half the year in Wailau Valley on Moloka'i's north shore: no phone, no paper, no mail, etc. This is my first opportunity to comment. Thanks for your time.

Sincerely,

	LOCAL INPUT IN DECISIONS	CONTROL	HONEY:
CURRENT SYSTEM	Non-official input by individuals & organizations	Maul County controls all decision making and administers all services	Getting & Sp Determine Administr
NEIGHBORHOOD BOARD	All the above, PLUS Official, advisory input by locally-elected Board	Same as above, Board has advisory role only	Getting and Same as a
TOWNSHIP	All of above, PLUS 1. Locally-elected Board/Commission 2. Possibly locally-elected administrator	Same as above, EXCEPT 1. Township-controlled functions, to be determined (example: Planning, Permits and Codes, etc.) 2. Direct interaction with State 3. Direct interaction with federal government	Getting: Mostly det Township c and State Some direc Spending: Determined State an
SEPARATE COUNTY	All the above, PLUS Locally-elected Council and Officials	Local control of County decision making and administration of all County services More direct interaction with state agencies (e.g. representation on State Boards/Commissions) Direct interaction with federal government	Getting: Real prop State graa Federal pu Spending: Establish adminis

Typical Organization Chart Charter Township



¹Examples Include (all optional):

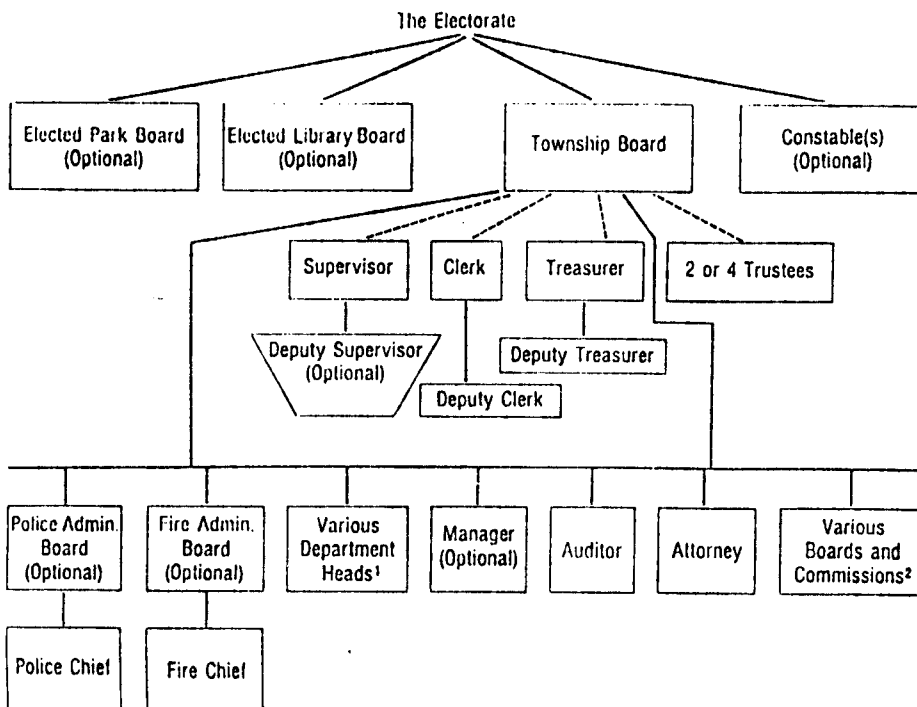
Assessor
Building Official
Fire Chief
Police Chief
Public Works Director
Zoning Administrator

²Examples Include: Board of Review (mandated)

(the following are optional):

Building Authority
Civil Service Commission
Downtown Develop. Authority
Planning Commission

Typical Organization Chart General Law Township



¹Examples Include (all optional):

Assessor
Building Official

²Examples Include: Board of Review (mandated)

(the following are optional):

Building Authority

A MODEL FOR MOLOKA'I TOWNSHIP

TOWNSHIP POWERS AND RESPONSIBILITIES

Planning - Land Use - Zoning (within limits set by state)

Uniform Building Codes

Definition (set Molokai-specific codes)

Application/Enforcement (permits & appeals)

Pass township ordinances (that do not conflict with those of the State or County), enforced by County Police Department

Administer local services, as negotiated with county

Beginning with:

Building Inspector

Parks and Recreation

Office of Human Concerns (Elderly, Housing, etc.)

Special Projects (Ag Park, Ice House, Cooling Plant)

Hire necessary personnel to carry out township functions

Recommend legislative and funding priorities for Molokai to county and state, and advocate for those priorities

Apply for federal funds, as allowed by federal law

Levy additional real property tax, up to ___ mills for period of ___ years, to finance special township programs, subject to voter approval

Nominations to mayor and governor for county and state appointments

Represent interest of community in dealings with the county, state, federal governments and other outside interests

LEADERSHIP

Locally-elected Township Council (seven members) with 2-year terms

Mayor (at-large) - serve as Chair of Council and oversees administrative activities of Township

Treasurer (at-large) - chairs Finance Committee and oversees financial affairs of Township

Five Precinct Councilmembers, one elected from each of the Molokai precincts

Planning Commission (seven-members) appointed by Township Council for staggered three-year terms

FUNDING

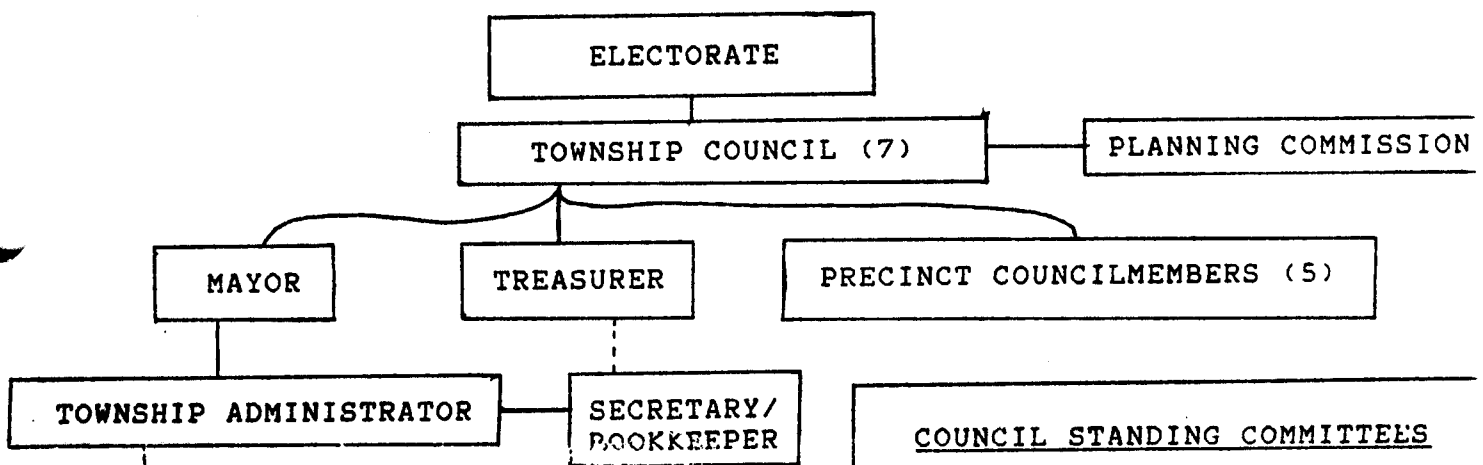
- Option A: Township receives set percentage of Molokai-derived real property taxes (or all taxes and fees)
- Option B: Township receives percentage of Molokai-derived taxes and fees as negotiated with County, with ____ % minimum
- Option C: Township receives percentage of county's state grant-in aid funds
- Option D: Township receives separately designated state grant-in aid funds

In addition, township could have authority to levy some additional real property tax millage (time limited, for specified use) subject to township voter approval.

REASONS FOR TOWNSHIP FOR MOLOKAI

- > Bring decisions on exclusively local issues closer to people
- > Right of people to free access to local decision makers
- > To encourage participatory democracy by giving all residents (but particularly young people) an opportunity to see and experience government in action and provide for socialization/education for future community leaders
- > Enfranchise small-island voters with locally-elected Board with real powers on major locally-based issues
- > Need for popularly-elected (accountable) and legitimized advocates/representatives to present island's concerns to county and state and serve as two-way channel of information
- > Allow community to select their own leaders, rather than have them appointed by others
- > Provide training ground for future County and State government officials from Molokai

STRUCTURE OF TOWNSHIP



Thank you for coming to New Hampshire as part of NATaT's small cities technical assistance project. I felt that the workshops at Newport, Bethlehem and Epping gave our municipal officials an excellent introduction to the Community Development Block Grant program, especially for officials of municipalities which have never applied. The presentations went particularly well, and I have received favorable comments from town officials regarding your participation.

Laurence E. Goss, CDBG Program Manager, New Hampshire

I have been to many conventions in my 14 years in local government. . . . I have never seen one better organized, more smoothly run and any more worthwhile. The sessions are interesting, yet brief. An organization that can, at the last moment, get the Senate Majority Leader for a speaker has got respect in my book.

G. Morris Wells, town manager
South Hill, Virginia

I am glad to receive the *National Community Reporter* and to see the work it performs in explaining and analyzing issues of interest and importance to our nation's small communities, as the voice of the National Association of Towns and Townships.

Sen. Jim Sasser, member
Senate Committee on Governmental Affairs

I know when I meet with members of NATaT, I'm talking with people firmly dedicated to representative government and to the personal and political freedoms we cherish.

U.S. Secretary of Transportation
Elizabeth Hanford Dole

NATaT
1522 K Street, NW, Suite 730
Washington, D.C. 20005
(202) 737-5200



NATIONAL

ASSOCIATION OF

TOWNS

AND

TOWNSHIPS

Effective

THE VOICE OF SMALL TOWN

AMERICA

PROGRAMS AND SERVICES

For information to be most useful, it must be in the hands of people who can connect quality information with local government representatives to make informed decisions on local issues forming this service.

Marilyn L
Lower Main

The National Association of Towns and Townships (NATaT) champions the cause of America's small governments. NATaT advocates for grassroots governments, helps elected leaders be more effective and enhances the quality of life for people living in Hometown, USA.

The association offers local-government officials skills training and technical advice on managing grants and local development. NATaT keeps its members abreast of news and trends, and it conducts an annual conference—America's Town Meeting. So national policies don't overlook governments in

NATaT: LOCAL OFFICIALS' LINK

NATaT's federal affairs program is the bridge that links the federal government with thousands of governments in small communities. NATaT brings local officials together with members of Congress, Cabinet secretaries and the president.

"It's easy when you're from a large city to find a voice in large government or reach key figures," a township supervisor told NATaT. "It's encouraging to know that we, a small government, have a direct line to the president."

That direct line extends throughout the federal government. NATaT has been a leading force in three drives to renew or save the General Revenue Sharing program. The secretary of Housing and Urban Development commended NATaT's role in getting the "small cities" Community Development Block Grant program working for thousands of localities. After years of being shortchanged in the Payments in Lieu of Taxes program, townships are now able to have a fair share of the funds; NATaT worked through Congress and the Department of the Interior to get townships into this program.

Regulations affect life in small communities

the small communities channel House The 100,000 national search people Ther but on Towns all small towns,

as much NATaT making been a transp grams, Home others To t

would be a herculean task. The association cooperates with a number of groups to address complex issues.

NATaT is a founding member of the Rural Governments Coalition, a respected body of local and state government organizations. NATaT representatives have been appointed to commissions advising Congress and the administration on the nation's rural development, intergovernmental relations, environ-

NATaT: CONDUCTING AMERICA'S TOWN MEETING

Once a year, the doors open to America's Town Meeting, NATaT's national conference. One official called the conference a way "to let the people in Washington know that Porter Township is here."

The conference focuses on some of the most pressing issues facing small towns today. The three-day program tackles the issues in a variety of ways.

General sessions provide a forum for people like the president, vice president, congressional leaders, administration officials, scholars and corporate executives to address NATaT's members on current events and national issues. Workshops answer questions, probe into programs and identify solutions to the problems of town and township governments. Receptions allow delegates to exchange ideas with each other and voice concerns with legislators, while exhibits and demonstrations let delegates shop for local-government products and services.

The association sponsors an array of other meetings and conferences, too. Agendas in-

mental and transportation policies, and economic development. Association leaders give the small-town view of policies and programs in regularly scheduled meetings with the president and White House advisers.

To some people, Congress, a federal agency, or the White House may seem far removed from the town halls in America's small communities. The NATaT bridge makes the gap a lot smaller.

clude everything from the nuts and bolts of better local government to the many facets of federal policies.

Further, NATaT cosponsors seminars and training sessions around the country. Staff members are often speakers at conferences of other organizations, including NATaT's member state associations.



NATaT: SHARING KNOWLEDGE, DEVELOPING SKILLS

Is my town eligible for a Community Development Block Grant? How can I get funding for an industrial plant? What are the dangers of a hazardous waste dump in the township?

As government leaders in towns and townships face new challenges, NATaT is turned to more and more often as a source of knowledge and skills. Daily, the staff answers questions like these from NATaT's members.

NATaT's growing publications program is designed to give rural officials practical tools that they can use to solve their problems.

The **National Community Reporter** is the one national news journal in America which covers a broad range of topics in the interest of towns and townships. The **Reporter** and its special-interest supplements put legislation updates, management trends, resource tips, program insights and small-town news in the hands of more than 40,000 readers.

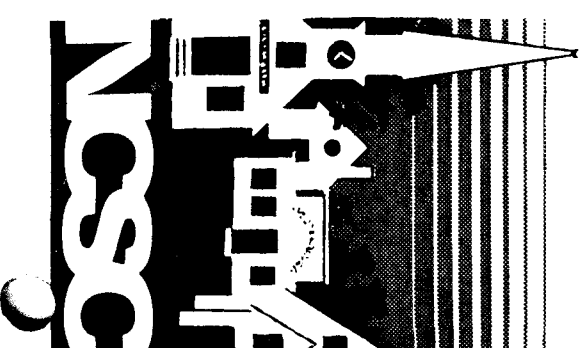
The **NATaT Perspective** is the only monthly newsletter that explains and analyzes the federal issues affecting small communities.

NATaT: OPENING NEW LEADERSHIP

Governing and providing public services in small, often isolated jurisdictions can be a tough challenge.

NATaT understands this challenge and is responding to it through the development of the National Center for Small Communities (NCSC). The center is a training, research and policy development resource for local officials.

NCSC has established a national fellowship program to train a new cadre of rural leaders. The center conducts intensive leadership institutes and publishes low-cost materials to help rural officials sharpen their skills as political managers and community leaders.



NATaT's program is designed to help small-town officials develop the skills and resources needed to manage their communities effectively.

The **NATaT Perspective** is a monthly newsletter that provides small-town officials with the latest news and information on federal and state policies affecting their communities.

Many limited sophisticated day's program resources. The program is a community workshop for government leaders. Clear, useful, and practical information is provided to help small-town officials develop their skills as political managers and community leaders. The program is designed to help small-town officials develop the skills and resources needed to manage their communities effectively.

December 9, 1991

Mr. Robert Nakasone and Members of
the Maui County Charter Commission
County of Maui
Wailuku, Maui, HI 96793

Dear Mr. Nakasone, and Members of the Commission,

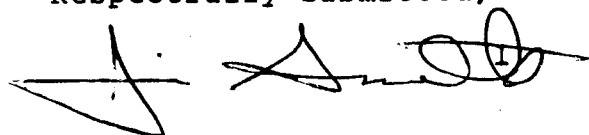
Thank you for your patience and willingness to consider by concerns regarding the survival of our democratic form of government, namely, my requests that the scope of Chapter 10 be extended to include actions taken by Boards and Commissions.

Again, I implore you to amend Article 10. The political dogma that asserts that where there is mass there is truth, has been an underlying premise of succeeding administrations of the County for more than a decade. Perhaps, the distrust and lack of faith in government's integrity can be traced to this idea.

My hope is that by amending the Article 10, the decision of a majority will in face be judged for its moral impact. It will be measured by standards articulated in this article for the purpose of preserving our democratic form of governance.

I have enclosed with this letter a copy of the Resolution I read to the Commission at it's December 5, 1991 meeting. I have revised it as you will note.

Respectfully submitted,

A handwritten signature in black ink, appearing to be "J. Nakasone", written over a horizontal line.

91-38

RESOLUTION

Introduced by JIM SMITH registered voter

WHERE AS, for the survival of government it is necessary that citizens justifiably have trust and confidence in the integrity of government;

WHERE AS, actions of the Board of Variance and Appeals, Maui Planning Commission, Board of Water Supply or any regulatory Board or Commission of the County of Maui may not justify trust and confidence in the integrity of government;

BE IT RESOLVED, that the Maui County Charter Commission amend Article 10, Code of Ethic, Section 10 - 1, Declaration of Policy, to read: : Elected and appointed officers and employees, the Board of Variance and Appeals; Board of Water Supply; Maui Planning Commission; Liquor Control Adjudication Board and Police Commission shall demonstrate by their actions the highest standards of ethical conduct to the end that the public may justifiably have trust and confidence in the integrity of government."

FURTHER, be it resolved that Section 10 -4 (2) be amended to include: "No board or commission by its action shall cause a prudent registered voter to lose trust and confidence in the integrity of government.";

FURTHER, that Section 10 - 4 (2) be amended to include: "No agent of the Office of Corporation Counsel shall permit a Board or Commission to take action upon an incomplete application, upon a misrepresentation of material fact, or the intention or content of legislative directive, nor shall proceedings be held without the presence of a representative of the Office of Corporation Counsel.";

FURTHERMORE, 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 month newspapers, address to citizens of this community, and any other administrative remedy the Board of Ethics deems appropriate."



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
WAILUKU, MAUI, HAWAII 96793
TELEPHONE 244-7740

91-39

January 7, 1980

MEMO TO: Charter Review Ad Hoc Committee
F R O M: Corporation Counsel Paul Mancini
SUBJECT: Residency Requirement,
Determination of Residency

This is in response to the question posed to this department, asking whether it would be possible to impose a residency requirement in the Charter of the County of Maui for candidates seeking County public office. Further, you asked that we identify whether standards exist which can be used in determining what constitutes residency.

RESIDENCY REQUIREMENT FOR ELECTIVE PUBLIC OFFICE

With regard to the first question, we answer in the affirmative subject to the qualifications identified herein.

Currently, Hawaii Revised Statutes provides for a residency requirement of three months for candidates for primary elections. However, we are of the opinion that such provision is inapplicable to elections for County offices.

HRS, Section 12-1.5, states:

"No person shall be a candidate for any primary election unless at the time of filing of his nomination papers he is and shall have been a resident of the district from which he seeks election for a period of at least three months."

An Attorney General Opinion dated March 29, 1977, stated that the subject three-month residency requirement was in conflict with Article III, Section 7 of the Hawaii State Constitution as to State Constitutional officers and was therefore invalid.

The rationale was that the statutory residency requirement imposed a requirement in addition to those stated in the Constitution. Where a Constitution sets forth specific eligibility requirements for a particular office, the Constitutional specifications are exclusive and the Legislature may not require additional or different qualifications. The opinion further stated that:

"Prescribing qualifications for eligibility to elected county officers may also be questionable."
(Citing A.G. Opinion 75-22.)

Article VII, Section 2 of the Hawaii State Constitution states that:

"Each political subdivision shall have the power to frame and adopt a Charter for its own self government."

Furthermore:

"Charter provisions with respect to a political subdivision's executive, legislative and administrative structure, and organization shall be superior to statutory provisions, subject to the authority of the Legislature to enact general laws allocating and reallocating powers and functions." Article VII, Section 2, Hawaii State Constitution."

In a 1975 opinion (75-22), the Attorney General was "inclined to view that prescribing qualifications for eligibility to county offices did not fall within the constitutional authority to allocate or reallocate powers and functions"

Therefore, we are of the opinion that the State statutory provisions regarding the three months' residency requirement

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is invalid as to County elections. In the same way as a statute cannot provide requirements for election to State offices in addition to the provisions of the State Constitution, a statute also cannot provide requirements for the election to county offices in addition to the provisions of the county charter. This is especially so in view of the County Charter supremacy in matters involving the county's structure and organization.

However, even though HRS, Section 12-1.5 may be inapplicable to elections for County offices, the question remains as to whether the inclusion of a residency requirement in the County Charter would be constitutionally valid. The resolution of the question must address whether the right to be considered for public elective office is of a nature that enjoys constitutional protection equal in scope to that afforded the exercise of the right to vote, the right to work, the right to travel and other fundamental rights.

The issue is a traditional equal protection issue--does a residency requirement for candidates for public office violate the equal protection clause of the Fourteenth Amendment to the United States Constitution. The equal protection clause invalidates certain types of legislative classifications. This clause does not automatically rule out legislative classifications. Substantially all legislation involves classification of some sort. The Government, in the classification of a particular group as a subject for regulation, must proceed upon a rational basis and may not resort to arbitrary classification. In reviewing statutes under the equal protection clause, the character of the classification in question, the individual interests affected by the classification, and the governmental interests asserted in support of the classification must be examined. The clause appears to require that any classification be reasonably relevant to the recognized purposes of good government and that no distinction be made on the sole basis of race or alienage as to certain rights.

Courts have used a number of approaches in analyzing legislative classifications regarding residency requirements for constitutional validity.

Cases reviewed in this area indicates four different approaches to the problem:

1. In California and New York (Phelem v. City of Buffalo, 54 App. Div.2d 262, 388 N.Y.S.2d 469), the Courts have held that the strict scrutiny (compelling State interest) test applies because durational residency requirements infringes on the rights to travel, the right of free association and the right to vote. The courts in these jurisdictions state that the durational residency requirements for political candidates do not serve a compelling state interest and are therefore unconstitutional.

2. Some jurisdictions focus upon the traditional and wide spread use of such residency requirements and find that there are no constitutional restraints on such. These jurisdictions take note of the fact that the U.S. Constitution requires that the President and members of both legislative houses be citizens of the United States for certain periods of years. See Gralike v. Walsh, 483 S.W.2d 70 (Mo. 1972).

3. Other jurisdictions follow the California's view requiring that the compelling state interest standard be applied. These jurisdictions, however, find that durational residency requirements do serve a compelling state interest.

In Gilbert v. State, 526 P.2d 1131 (Alaska 1974), the court upheld a three-year residency requirement for state legislative offices based upon the compelling state interest standard. The court held that a durational residency requirement merely delays entry into a political race and therefore is only a minimum infringement of the rights involved. See also Hatcher v. Bell, 521 S.W.2d 799 (Tenn. 1974), and Chimento v. Stark, 353 F.Supp. 1211 (D.C.N.H.) aff'd mem, 414 U.S. 802, 94 S.Ct. 125, 38 L.Ed.2d 39 (1972). (Note: Chimento dealt with a seven year residency requirement for governor.)

Other variations of this approach have been used. In Henderson v. Fortworth Independent School District, 526 F.2d 286 (5th Cir. 1976), a three-year residency requirement for

school board members was struck down. The strict scrutiny analysis was applied and a compelling state interest was found by the court to exist. However, the court ruled against the requirement because it completely restricted access to the school board and thus was not a lesser drastic alternative. The court distinguished this case from the Chimento case, in that in Chimento the candidate was prohibited from only the governor's seat leaving him the opportunity to participate in other offices which allowed him to affect state policies. In Henderson, the court argued, the school board was the only organ available to the candidate to affect school policy and therefore to restrict his access would be unreasonable.

4. Hawaii's rule: rational basis.

In Hayes v. Gill, 52 Haw. 251, 473 P.2d 872 (1970), the Hawaii Supreme Court rejected the compelling state interest and found that the rational basis test as the standard be used. The court reasoned that because there is no showing of invidious discrimination the rational basis standard would be applied. The court also found that the practice of durational residency requirements was wide spread and therefore added validity to the practice. (Note: In Hayes the court seemed to take for granted that residency requirements for candidates serve some state interest. The court, however, did not state what those interests are.)

The rational basis standard is probably still the rule in Hawaii today. In Nachtwey v. Doi, 583 P.2d 955 (1978), the court decided the constitutionality of a statute requiring an indigent to file a petition containing .5 per cent of the registered voters' signatures in the district to be a candidate. The court noted that candidacy per se lacks status as a fundamental right. However, the court went further to indicate that the restriction may affect voters rights. This being the case, the court stated the test as:

"If a reasonably diligent candidate can satisfy the signature requirement, then the right to candidacy is not infringed. (Nachtwey at 962)."

A durational requirement would eventually allow all persons to be candidate and therefore the right to be a candidate would not be infringed.

One limitation may exist because of the court's use of the word reasonably. In Antonio v. Kirkpatrick, 579 F.2d 1174 (8th Cir. 1978), the court used a rational basis test but found that the ten year residency requirement was unreasonable when applied to the job of state auditor. The court noted that the requirement may be reasonable if applied to a policy-making office such as the governorship, but that a ten year period was too long for the ministerial position of State auditor.

Therefore, we are of the opinion the rule in Hawaii is that durational residency requirements for candidates for elective public office are valid as long as they are (1) reasonable in length, and (2) reasonably related to the position involved.

We must note that this opinion is contrary to the opinion of the County Attorney contained in a letter to James S. Ushijima, County Clerk, dated June 23, 1972. With regard to said opinion, we do not believe that York v. State, 53 Haw. 557, 498 P.2d 644 (1972) as referenced in that opinion is precedent on the instant issue. We distinguish that case as one dealing with the right to pursue employment as opposed to the right to be a candidate for public elective office. This interpretation appears consistent with the court's holding in Nachtwey, supra. We attach that opinion for your reference.

DETERMINATION OF RESIDENCY

HRS, Section 11-13, sets forth the rules for determining residency as the term is used in the HRS chapter on elections. It is essentially a codification of the common law definition of residency, which definition is synonymous with domicile. As stated in HRS, Section 11-13(1):

"The residence of a person is that place in which his habitation is fixed, and to which, whenever he is absent, he has the indication to return."

Therefore, while the statutes do not refer to domicile, in the absence of evidence of a contrary legislative intent, "residence" in a statute is generally interpreted as being the equivalent of domicile. This interpretation is further supported by the comments to the restatement of the conflict of laws Second, Section 11.

In determining whether a person is a domiciliary of the State of Hawaii, the Hawaii Supreme Court has looked toward two factors: (1) physical presence at the particular place, and (2) intention of the party to reside there permanently, i.e., to make the place his home with no intent to leave at any foreseeable future time. Arakaki v. Arakaki, 54 Haw. 60 (1972).

Furthermore, the Court requires that in order to recognize a new domicile, not only must the above requirement be met, but there must also be an intent to abandon former domicile. Yamane v. Piper, 51 Haw. 339 (1969). In doing so, the Court determines a person's intent by his acts viewed in their totality. In the Arakaki case, one of the parties attempted to establish that his domicile had been Hawaii. In determining his domicile, the Court looked at the party's job, home, and family's financial obligations in the State. In the Yamane case, the person was found to have abandoned his Hawaii domicile by not having left any real or personal property, no bank account, and having sold his automobile, television and his household furnishings.

That the Legislature intended to adopt the common law definition of domicile for "residence," is clear from the apparent codification of Re Lee Yit Kyau Pang, 32 Haw. 699 (1933). In Pang, the Hawaii Supreme Court distinguished residence from domicile in that, "residence is used to indicate the place of dwelling, where the permanent or temporary; while domicile is used to define the fixed and permanent residence to which when absent, one has the intention of returning." Pang, supra, Haw. at 704, quoting from in re Brannock, 131 F. 819, 822.

An actual resident includes one who has moved into a county and rented a house there with the intention of remaining until he has completed a certain job although he did not need to reside there permanently. Therefore, a person may be an actual resident of one county and have a legal residence in another. When a man buys or rents a house or sets housekeeping with his family with the design of remaining there until he has completed certain work, he becomes an actual resident there although his domicile is in another country to which he intends to return upon the completion of the job. See Pang, supra.

Finally, the United States Supreme Court has listed the factors that it considers relevant when determining a person's domicile:

"All facts which go to show the relations retained to one's former place of abode are relevant in determining domicile. What bridges have been kept and what have been burned? Does he retain a place of abode there, or is there a family home with which he retains identity? Does he have investments in local property or enterprise which attach him to the community? What are his affiliations with the professional, religious, and fraternal life of the community, and what other associations does he cling to? How permanent was his domicile in the community from which he came? Had it been a family fief or was he there by bird of passage? Would a return to the old community pick up shreds of close association or has he severed his relations that his old community is as strange as another? Does he pay taxes in the old community because of his retention of domicile which he could have avoided by giving it up?" District of Columbia v. Murphy. 314 U.S. 441, 457-58 (1941).

PREVIOUS INQUIRIES

By your communication dated December 5, 1979, you asked for clarification on two matters contained in my May 15, 1978 memo to the then Councilman Alvin Amaral. The issues concerned Section 3-6(4) and Section 4-2(4) of the Revised

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January 7, 1980

Charter of the County of Maui. My suggestion to Mr. Amaral regarding Section 3-6(4) was that the phrase in line 1 of said section, "on procedural motions" be clarified.

You asked that I explain what is meant by procedural motions. Your question was precisely my request to Councilman Amaral. The reason I asked for clarification was that the term is not subject to any precise definition. The record of the Charter Commission does not define the term nor does it provide any precise objective sought by the term through the application of Section 3-6(4). Without clarification in the Charter or by an ordinance, any action pursuant to the provision could be subject to challenge.


With regard to Section 4-2(4), I asked Councilman Amaral to consider whether the Section could be amended to authorize a public hearing on any matter and not just matters dealing with ordinances and resolutions.

You asked that I elaborate and provide an example of what is meant by "any matter and not just matters dealing with ordinances and resolutions."

I used the term "any matter" to raise the issue as to whether it serves any purpose to require that a subject matter be proposed in the form of an ordinance or a resolution prior to bringing such for a public hearing. Any matter would refer to any subject which was not in the form of a proposed ordinance or a proposed resolution.

Your inquiry concerning the potential conflict between the Water Board's power to promulgate rules and the Council's power to levy special assessment will be treated in a separate memorandum.

If any of this matter needs clarification, please do not hesitate to contact me.


PAUL R. MANCINI
Corporation Counsel

PRM:jkm
Enclosure

June 23, 1972

Honorable James S. Ushijima
County Clerk
County of Maui
Wailuku, Maui, Hawaii

Re: Qualification of Potential
Candidate, Mrs. Peggy S. L.
Ross. for the Office of Mayor

Dear Sir:

This is in response to your request for an opinion regarding the qualification of potential candidate Mrs. Peggy S. L. Ross for the Office of Mayor. This office has been apprised of the following facts as to the qualification of Mrs. Ross as a resident in this County:

1. Mrs. Peggy S. L. Ross, of 2094 Pakahi Street, Wailuku, established her residency in the County of Maui in February, 1971, and has lived here continuously since that time. To this date, she has been a resident of the County for less than 18 months; and

2. She registered as a voter in the County of Maui on May 24, 1972.

Section 7-2 of the Charter of the County of Maui, in pertinent part, states:

"Any citizen of the United States not less than thirty (30) years of age who has been a voter of the county for at least three years prior to his election shall be eligible to fill the office of mayor." (Emphasis added.)

Honorable James S. Ushijima

Page 2

June 23, 1972.

Under the provisions of this section, Mrs. Ross is clearly not eligible to fill the Office of Mayor. However, this office is of the opinion that Section 7-2 is violative of the Equal Protection Clause of the Constitution of the United States.

Whether a statute stands in violation of the Equal Protection Clause involves essentially an examination of three criteria: "the character of the classification in question; the individual interests affected by the classification; and the governmental interests asserted in support of the classification". Dunn v. Blumstein, 92 S.Ct. 995, 999; 31 L.Ed. 2d 274, 280 (1972).

In Dunn v. Blumstein, *supra*, the U. S. Supreme Court held that the one-year residency requirement for voters in Tennessee was in violation of the Equal Protection Clause. The Court stated that a citizen has a constitutionally protected right to participate in elections on an equal basis with other citizens in the jurisdiction. While this equal right to vote is not absolute, any restriction and regulation of access to the franchise must meet close constitutional scrutiny.

Freedom to travel throughout the United States and to enter and abide in any state of the Union is also a basic constitutional right. In order that a state may constitutionally deprive any citizen of a fundamental right such as the right to vote or penalize a citizen for exercising a fundamental right such as the right to travel, that state must show that the measure is necessary to protect a compelling state interest.

The Court concluded that durational residence voting requirements are not necessary to further a compelling state interest and thus are unconstitutional under the Equal Protection Clause.

The Supreme Court of Hawaii, in York v. State, ___ Haw. ___ (1972), held that the State may not deny employment to

persons who have less than three-years residency in the State. The Court referred to H.R.S. Sec. 78-1(a), which reads in pertinent part as follows:

"All officers, whether elective or appointive, and all employees in the service of the government of the state or in the service of any county or municipal subdivision of the state . . . shall be . . . residents of the state for at least three (3) years immediately preceding their appointment." (Emphasis added.)

The Court concluded that "The discrimination imposed by H.R.S. Sec. 78-1(a) denies arbitrarily to certain persons, merely because of their status as residents of less than 3 years duration, the right to pursue otherwise lawful occupations. It is therefore unconstitutional".

In the companion cases of Camara v. Mellon, 484 P.2d 577, 4 Cal.3d 714, 94 Cal.Rptr. 601 (1971), and Zeilinger v. Nelson, 484 P.2d 578, 94 Cal.Rptr. 602 (1971), the California Supreme Court was faced with the exact same issue of durational residency requirements for candidates for public offices as now raised here.

The Camara case, supra, involved Section 602 of the Santa Cruz City Charter, which read in pertinent part as follows:

"No person shall be eligible to be . . . a member of the council unless he . . . shall have been for at least three (3) years preceding his election or appointment a resident of the City of Santa Cruz"

The California Court stated, ". . . we have concluded that the challenged Santa Cruz charter provision violates the Equal Protection Clause of the Fourteenth Amendment to the federal Constitution".

In Zeilinger v. Nelson, supra, the California Court quoted with approval from Gansmi v. Rosenzard, 44 N.J. 166, 207 A.2d 665, 667 (1965), where the New Jersey Court stated:

"The right to vote would be empty indeed if it did not include the right of choice for whom to vote This does not mean there must be perfect equality between the two But it does mean that in judging the validity of a restraint upon eligibility for elective office, we must be mindful that the restraint is upon the right to vote as well"

"Far from being unrestricted, the power to prescribe qualifications for elective office is sharply limited by the constitutional guarantee of a right to vote. A prescribed qualification for office must relate to the needs of officeholding as such as the special needs of the particular office involved, with the voters free to judge the personal or individual fitness of the candidates who have those basic qualifications. The line separating the basic needs of office from individual fitness of a candidate, perhaps more easily felt than described, is vital, and the fundamental value involved is best served if the judiciary insists that the reason for inroads upon the right to vote be real and clear and compelling."

The California Court went on to conclude at page 582:

"Since the right to run for public office is as fundamental a right as is the right to vote, we have carefully scrutinized the residence restriction in the Butte County Charter. Having done so we are not convinced that the five-year provision constitutes the least restrictive method of achieving the desired purpose, namely a reasonable knowledge by a proposed candidate of the general requirements of his county."

Bolanowski v. Raich, 330 F. Supp. 724 (1971) was an action by a potential candidate for the Office of Mayor for judgment determining that the three-year residency requirement for mayoral candidates unreasonably burdened his right to run for office and the right of electors to vote for a candidate of their choice in violation of the Equal Protection Clause. The U. S. District Court for the District of Michigan held that the three-year residency requirement for mayoral candidates which operate to exclude potential candidates for consideration by the voters of the city was invalid as being in violation of the Equal Protection Clause.

Since Section 7-2 of the Charter of the County of Maui is similar to those reviewed above in Bolanowski, Zeilinga and Camara, it appears that the section stands in violation of the Equal Protection Clause of the federal Constitution. The case of Dunn v. Blumstein, *supra*, handed down by the highest court in the land on April 26, 1972, is indicative of the current status of the law regarding durational residency requirements for access to the franchise. Additionally, the recent action by the Hawaii Supreme Court, in finding H.R.S. 78-1(a) constitutionally invalid, thereby removing the three-year residency requirement for candidates to the state legislature, makes more evident the constitutional invalidity of Section 7-2 of the Charter of the County of Maui.

Very truly yours,

Melvyn T. Yoshida

Melvyn T. Yoshida
Deputy County Attorney

MTY:dg

cc: Honorable Elmer F. Cravalho
Honorable Goro Hokama

REVIEWED AND APPROVED:

B. D. Macdonald

County Attorney