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MEMORANDUM

MEMO TO: Douglas Levin, Chair
Salary Commission

FROM: Adrienne N. Heely *ANH/AM*
Deputy Corporation Counsel

SUBJECT: Request for Opinion Regarding Applicability of Hawaii Revised Statutes § 46-24 to the Managing Director's Salary

This memorandum is in response to your oral request at the June 13, 2008 Salary Commission meeting regarding the following issues:

I. Issues:

- (1) Does Hawaii Revised Statutes ("H.R.S.") § 46-24 apply to the Managing Director's salary?
- (2) Is the Salary Commission limited to the 95% rule of H.R.S. § 46-24 in setting the salary of the Managing Director?

II. Brief Answer:

We are of the opinion that H.R.S. § 46-24 does not apply to the Managing Director's salary, and the Salary Commission is not limited by the "95% rule" in setting the salary of the Managing Director.

III. Discussion:

In researching your questions, posed, I reviewed the following:

- A. Hawaii Revised Statutes;

- B. The Revised Charter of the County of Maui (1983), as amended ("Charter"); and,
- C. Hawaii case law.

A. H.R.S. § 46-24.

H.R.S. § 46-24 states:

Limitation on salary of first deputy or assistant. Notwithstanding any other law to the contrary, the salary of any first deputy or first assistant to the head of any department of the county governments shall not exceed a sum equal to ninety-five per cent of the salary of such department head.

The Managing Director is neither a first deputy nor a first assistant. The Managing Director is the head of the Department of Management.

B. The Charter

Article 8, Chapter 1, Revised Charter of the County of Maui (1983), as amended ("Charter"), describes the Department of Management as consisting of a Managing Director and the necessary staff. Pursuant to Charter Section 8-1.2, the Managing Director is appointed and may be removed by the Mayor.

Charter Section 8-1.3 sets forth the powers, duties, and functions of the Managing Director.¹

The Charter does not define the Managing Director as a first deputy or assistant to the Mayor, but defines the Managing Director as the head of the Department of Management and as the principal

¹ The managing director shall:

1. Act as the principal management aid to the mayor.
2. Supervise the administrative functions of those agencies, departments, boards and commissions assigned by the mayor.
3. Evaluate the management and performance of each agency.
4. Prescribe standards of administrative practice to be followed by all agencies under his or her supervision.
5. Supervise and coordinate those functions described in Subsections 7-5.6, 7-5.7, and 7-5.8.
6. Perform all other duties and functions required by this charter or assigned by the mayor.

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management aid to the mayor. The Charter also states that, upon a vacancy in the Mayor's Office, the Managing Director shall act as mayor.²

C. Hawaii Case Law

A review of Hawaii case law revealed no cases relating to the applicability of H.R.S. § 46-24 to the Managing Director's salary.

However, Hawaii courts have explained that when construing a Charter provision:

The interpretation of the charter is similar to the interpretation of a statute. And [t]he standard of review for statutory construction is well-established. The interpretation of a statute is a question of law which this court reviews de novo. In addition, our foremost obligation is to ascertain and give effect to the intention of the legislature[,] which is to be obtained primarily from the language contained in the statute itself. And where the language of the statute is plain and unambiguous, our only duty is to give effect to its plain and obvious meaning.³

The Charter states that the Salary Commission "shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county".⁴ Accordingly, the Salary Commission may set the Managing Director's salary at an

² Charter Section 7-6.1.a states: "If the unexpired term is less than one (1) year, the managing director shall act as mayor. If the office of managing director is vacant or during such periods that the managing director is unable to so act, the director of finance shall then act as mayor."

³ Maui County Council v. Thompson, 84 Hawaii 105, 106, 929 P.2d 1355, 1356 (1996) (alteration in original).

⁴ Charter Section 8-17.1.

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amount it considers appropriate. In making this determination, the Salary Commission is not limited by H.R.S. § 46-24.

APPROVED FOR TRANSMITTAL:


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cc: ✓ Michele White, Legal Assistant