

CHARMAINE TAVARES
Mayor



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June 3, 2008

MEMO TO: Danny A. Mateo, Chair
Policy Committee

FROM: Brian T. Moto
Corporation Counsel

A handwritten signature in black ink, appearing to read "Brian T. Moto", is written over the typed name and title.

SUBJECT: Additional Compensation Requests for Special Counsel
(POL-5)

I. Introduction.

The purpose of this memorandum is to respond to your memorandum, dated March 7, 2008, requesting legal advice regarding Section 3-6(6), Revised Charter of the County of Maui (1983), as amended ("Charter"), pertaining to the retention of special counsel.

II. Questions posed.

Your memorandum posed the following questions:

- (1) Whether, under this section, a two-thirds vote is required to authorize additional compensation for special counsel; and
- (2) Whether the vote requirement should be stated in the resolution authorizing the additional compensation.

At present, no resolution authorizing additional compensation for special counsel is pending before the Policy Committee; however, inasmuch as the Committee may receive and deliberate upon such resolutions in future, the subject request for advice was submitted to our Department.

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III. Applicable law.

Section 3-6 of the Charter states:

The council shall be the legislative body of the county. Without limitation of the foregoing grant or of other powers given it by this charter, the council shall have the power:

...
6. To retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment. Any such employment shall specify the compensation, if any, to be paid for said services.

When construing a Charter provision, the Supreme Court of Hawai'i has stated:

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.¹

IV. Analysis.

Section 3-6(6) clearly and unambiguously empowers the Council to retain outside attorneys.² It is also clear that a vote of two-thirds of the Council's entire membership is required to approve such hiring. Section 3-6(6) imposes this super-majority voting requirement upon the Council, but not upon any committee of Council; therefore, the Policy Committee, when deliberating on an

¹ Maui County Council v. Thompson, 84 Hawai'i 105, 106 (1996) (citing State v. Baron, 80 Hawai'i 107, 113 (1995)).

² Maui County Council v. Thompson, 84 Hawai'i at 106-107.

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agenda item referred to it by Council, is not subject to the two-thirds voting requirement.³

Although Section 3-6(6) requires that "the compensation, if any, to be paid for said services" be specified, Section 3-6(6) does not explicitly address a proposed increase in compensation for special counsel whose employment has already been approved. Section 3-6(6) is silent as to whether the two-thirds voting requirement applies in such situations.

We are not aware of any records or reports of any Charter Commission that would shed light on the issues posed.

In general, "[w]here the law relating to the particular subject does not specify the vote required to do the particular act, a majority vote is sufficient."⁴ Consequently, we conclude that a two-thirds vote is not required to authorize additional compensation for special counsel, and that Council may approve such additional compensation by majority vote. The voting requirement may be stated in the resolution authorizing the additional compensation; however, the inclusion of such a statement is not required and its omission would not render the resolution ineffective.

We note that the issues posed by the Policy Committee and analyzed in this memorandum may be clarified by an appropriate Charter amendment.

cc: Traci F. Villarosa,
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Moana M. Lutey,
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³ The Charter makes no mention of committees of Council.

⁴ McQuillin Mun. Corp. § 13.31.15 (3rd ed.).