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October 31, 2002

MEMO TO: Roy T. Hiraga, County Clerk

F R O M: Brian T. Moto
First Deputy Corporation Counsel *B. Moto*

SUBJECT: Section 50-10, Hawaii Revised Statutes

Introduction

The purpose of this memorandum is to respond to your memorandum, dated October 8, 2002, to James B. Takayesu, Corporation Counsel, requesting legal advice regarding the interpretation of a portion of Section 50-10, Hawaii Revised Statutes ("HRS").

Issue Presented

Your memorandum observes that a sentence within HRS Section 50-10 states as follows:

If the proposed charter and any of the proposed alternatives receive a majority of the votes cast at the election, the proposition receiving the larger majority shall supersede the proposition with the smaller majority.

You asked for clarification as to whether the phrase, "larger majority", as used in HRS Section 50-10 and as applied to alternative Charter amendment proposals, means: (a) a greater number of "yes" votes; or (b) a higher (*i.e.*, larger) ratio of "yes" to "no" votes.

Short Answer

In summary, we opine that the phrase, "larger majority", as used in HRS Section 50-10 and as applied to alternative Charter amendment proposals, means a greater number of "yes" votes and not a higher ratio of "yes" to "no" votes.

Analysis and Discussion

As discussed earlier, and as discussed in a letter, dated August 3, 2001, from the Department of the Corporation Counsel to Attorney General Earl Anzai, we are of the opinion that Chapter 50, Hawaii Revised Statutes ("HRS"), constitutes the enabling statutory law on county charter commissions and continues to be valid and applicable to the operation and procedures of county charter commissions and to the submission of charter amendments.¹

HRS Section 50-10 states, in pertinent part, as follows:

Each elector may vote for the proposed charter and for any proposed alternative. Blank ballots and spoiled ballots shall not be counted in determining the majority of the votes. Any proposition receiving a majority of the votes cast at the charter election shall be considered approved by the electors. If the proposed charter and any of the proposed alternatives receive a majority of the votes cast at the election, the proposition receiving the larger majority shall supersede the proposition with the smaller majority.

HRS Section 50-11 states as follows:

Every charter established under this chapter shall provide means by which the charter may be amended or revised. The provisions for amendment and revision must provide for approval of all amendments and revisions by referendum to the electors of the county. The amendment or revision shall be considered ratified if a majority of the electors voting on the amendment or revision cast their ballots in favor of adoption.

¹In our letter to the Attorney General, we identified the following arguments supporting the validity and relevancy of HRS Chapter 50: (1) The language of HRS Chapter 50 is plain and unambiguous with regard to its application to successive, and not just initial, county charter commissions; (2) HRS Chapter 50 has not been explicitly repealed, and repeals by implication are disfavored; and (3) HGEA v. County of Maui, 59 Haw. 65 (1978) confirms, not rejects, the continuing validity of HRS Chapter 50, and demonstrates that HRS Chapter 50 addresses matters of statewide concern and interest and has not been superseded by county charter provisions.

On the subject of statutory construction, the Supreme Court of Hawaii has stated:

When construing a statute, the starting point is the language of the statute itself. Courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute. Words are given their common meaning unless some wording in the statute requires a different interpretation. Moreover, although the intention of the legislature is to be obtained primarily from the language of the statute itself, we have rejected an approach to statutory construction which limits us to the words of a statute, for when aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no rule of law which forbids its use, however clear the words may appear on superficial examination. ... Finally, a rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable, because the legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality.²

In view of the provisions cited above, we believe that the most reasonable interpretation of the phrase, "larger majority", as used in HRS Section 50-10, is that it means the greater number of "yes" votes, and not, for example, the greater ratio of "yes" to "no" votes. This interpretation is consistent with the plain meaning of the word "majority".³ Further, there is no indication in HRS Chapter 50 that "majority" was intended to reference a percentage or ratio, and we do not believe it appropriate to read into the subject text a meaning which has no textual support.

²Cayetano v. Yoshina, No. 25372, slip op. at 1-2 (Hawai'i Oct. 7, 2002).

³The American Heritage Dictionary 757 (2d ed. 1982). ("majority ... 1. The greater number or part of something. ... 2.b. The number of votes cast in any election above the total number of all other votes cast.")

In addition, construing "larger majority" to mean the higher ratio of "yes" to "no" votes could lead to unintended and irrational results. Assume, for example, the following hypothetical election results on competing charter amendment proposals:

	<u>YES</u>	<u>NO</u>
Charter amendment proposal 9:	1,000	900
Charter amendment proposal 9A:	100	50

In the hypothetical circumstances summarized above, both proposals have received more "yes" votes than "no" votes; however, the ratio of "yes" to "no" votes differs between the proposals.⁴ If "larger majority", as used in HRS Section 50-10, were construed to mean the higher ratio of "yes" to "no" votes, Charter amendment proposal 9A would prevail, despite having received far fewer "yes" votes than proposal 9, because its ratio of "yes" to "no" votes is 2:1 as compared to proposal 9 with its ratio of 10:9. We believe that such a result conflicts with the intended purposes of HRS Chapter 50, which calls for the voters (or "electors", as they are referred to in HRS Chapter 50) to approve of charter amendments and revisions by referendum. By contrast, interpreting "larger majority" to mean the larger number of "yes" votes avoids this irrational result.

Our interpretation is also consistent with the general intent and purpose of the voting procedures set forth in HRS Chapter 50. These procedures were adopted⁵ by the State Legislature to clarify matters relating to ballot preparation and were a response to the Hawaii Supreme Court's decision in Kimura v. County of Hawaii, 49 Haw. 336 (1966). In Kimura, the Court suggested that legislation be considered to supply details as to the form of the ballot for charter proposals, the manner of voting, and the vote required when alternatives are submitted.⁶ It is appropriate, therefore, that

⁴It should be noted that, pursuant to HRS Section 50-10, blank ballots and spoiled ballots are not counted in determining the majority of the votes.

⁵Act 235, 1967 Haw. Sess. Laws 356. Act 235 amended Chapter 143A, Revised Laws of Hawaii 1955, as amended, pertaining to county charters.

⁶S.C. Rep. 430, 4th Legis., House J. 636 (1967).

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HRS Chapter 50 be interpreted in a manner that achieves, as much as possible, clear and sensible election results.⁷

If you have any questions or concerns, please do not hesitate to contact me.

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cc: James B. Takayesu, Corporation Counsel
Terry Vencl, Chair, Charter Commission

APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU
Corporation Counsel

⁷Our conclusion is also consistent with the use of the term "majority" in the Revised Charter of the County of Maui (1983), as amended ("Charter"). Section 14-2(3) of the Charter states, in pertinent part, as follows:

3. Should the majority of the voters thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or if no time is fixed therein, thirty (30) days after its adoption by the voters of the county.