

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
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December 17, 2002

MEMO TO: Scott Matsuura, Chair
Salary Commission

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

A handwritten signature in black ink, appearing to read "B. Moto", is written over the name "Brian T. Moto" in the "FROM" field.

SUBJECT: Salary Commission member terms - Implementation of
Charter Amendment

Introduction.

The purpose of this memorandum is to respond to your request for legal advice regarding the terms of office for members of the Salary Commission in light of the recent adoption of amendments to the Revised Charter of the County of Maui (1983) ("Charter").

Proposal Eleven - charter amendment relating to salary commission.

As discussed at the November 22, 2002 meeting of the Salary Commission, among the Charter amendments voted upon and approved by the voters of the County of Maui was Proposal Eleven, pertaining to the Salary Commission. As stated in the Revised Final Report of the 2001-2002 Maui County Charter Commission, the purpose of the amendments set forth in Proposal Eleven was to revise "the appointment process of the Salary Commission so that the nine members of this Commission will have staggered five-year terms, with two being appointed (with approval of the Council) every year (one in the fifth year), to provide greater continuity."¹

Pursuant to Proposal Eleven, the Charter was amended as follows (material repealed is bracketed; new material is underscored):

¹2001-2002 Maui County Charter Commission Revised Final Report, p. 31.

CHAPTER [16]17
SALARY COMMISSION

Section [8-16.1]8-17.1. Organization and Functions.

There shall be a salary commission, which shall consist of nine members appointed by the mayor with the approval of the council. [The term of office of the salary commission members shall end with the term of office of the mayor.] The members of this commission shall have five-year terms, and can be reappointed once to a second five-year term. Two members shall be appointed or reappointed each year, except that only one member shall be appointed or reappointed every fifth year. The commission shall determine the compensation of elected officials and appointed directors and deputy directors of all departments of the county provided, however, in establishing the compensation of appointed department heads and their deputies, the salary commission shall consult with those boards and commissions which have appointing authority for department heads.

Section 15-3. Salary Commission. Upon adoption of the proposed 2002 amendment to Section 8-16.1, the current members of the salary commission shall determine by lot the lengths of their terms to facilitate the appointment or reappointment pursuant to the annual sequence adopted in the 2002 amendment beginning in 2003.

The Revised Final Report of the Charter Commission set forth no effective date provision regarding the Charter amendments set forth in Proposal Eleven. However, pursuant to Charter Section 14-2(3),² we are of the opinion that the Charter amendments set forth in Proposal Eleven became effective on December 5, 2002, which is

²Charter §14-2(3) 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.

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that date that is "thirty (30) days after its adoption by the voters of the county."

Drawing of lots to determine salary commission member terms.

In accordance with the Charter, as amended, we do hereby reaffirm the oral advice given at your November 22 meeting. In particular, we opine that the terms of office of the current members of the Salary Commission shall not end as of the end of the term of office of the current mayor (*i.e.*, January 2, 2003),³ but shall continue in accordance with terms of office to be determined by the drawing of lots. We therefore recommend that the Salary Commission schedule a meeting for the purpose of determining, by the drawing of lots, the lengths of terms to be served by the current members of the Salary Commission.

In accordance with the Charter amendment, which provides for the staggering of member terms and for the implementation of an annual sequence of appointments beginning in 2003, we believe that the drawing should be done in such a manner as to provide member terms as follows:

Two members with terms of office ending March 31, 2003;
Two members with terms of office ending March 31, 2004;
Two members with terms of office ending March 31, 2005;
Two members with terms of office ending March 31, 2006; and
One member with a term of office ending March 31, 2007.⁴

The Charter amendments do not specify the particular manner or method to be used in drawing lots. In the absence of specific guidelines, we advise that the Salary Commission may use any method that is fair and objective. For example, it was suggested at your last meeting that a neutral party be designated to draw slips of

³Charter §7-2 provides that the term of office of a mayor shall be four years beginning at twelve o'clock meridian on the second day of January following the mayor's election.

⁴These terms of office are consistent with those terms specified for members of other County boards and commissions. In particular, Charter §13-2(1) states, in pertinent part, that "[u]nless otherwise provided, the members of all boards or commissions shall serve for staggered terms of five years beginning on April 1st and ending on March 31st five years thereafter."

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paper from two bowls, one with the names of Salary Commission members and the other with the terms of office to be served.

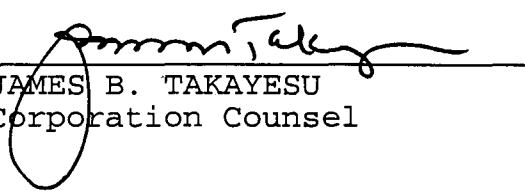
As discussed earlier, and in accordance with Chapter 92 of the Hawaii Revised Statutes, we believe that the drawing of lots should occur at a Salary Commission meeting with regards to which an agenda has been properly posted and filed and at which a quorum is present.⁵

BTM:ko

cc: Members of the Salary Commission
Mayor James "Kimo" Apana
Mayor Elect Alan M. Arakawa
James B. Takayesu, Corporation Counsel
Ken Taira, Deputy Director of Personnel Services
Dain P. Kane, Acting Council Chair

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APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU
Corporation Counsel

⁵HRS §92-7, 92-15; Charter §13-2(8).