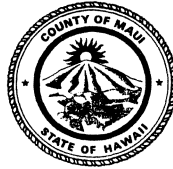


CHARMAINE TAVARES
Mayor



BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740
FAX: (808) 270-7152

May 7, 2007

MEMO TO: Carol A. Summers, Chair
Civil Service Commission

FROM: Traci Fujita Villarosa ^{TW}
First Deputy Corporation Counsel

SUBJECT: Request for Opinion regarding Salary Commission

The purpose of this memorandum is to respond to your letter, dated March 7, 2007, requesting a legal opinion relating to the Maui County Salary Commission and the adjustment of salaries of directors and deputy directors.

1. Whether or not the Salary Commission, via letter dated October 30, 2006, met its obligation under the Maui County Charter to "consult" with the four commissions which have appointing authority for department heads regarding its proposed revised salary model, i.e., by holding a two-month comment and participation period.

Section 8-17.1, Revised Charter of the County of Maui (1983), as amended ("Charter"), states, in part:

There shall be a salary commission, which shall consist of nine members appointed by the mayor with the approval of the council....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.

When construing a charter provision, the Hawaii Supreme Court has stated:

Carol A. Summers, Chair
Civil Service Commission
May 7, 2007
Page 2

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

The Charter does not define the term "consult". In accordance with the rule of construction just cited, our duty is to give effect, when possible, to the plain meaning of the Charter's provisions. Black's Law Dictionary defines "consult" as "[t]he act of asking the advice or opinion of someone...."²

In proposing the revised salary model, the Salary Commission followed previous practices and sent a letter, dated October 30, 2006, to all department heads, deputies, and commissions with appointing authority. A copy of the letter is attached hereto as Exhibit "1". The purpose of the letter was to inform recipients about the proposed salary model, the compensation levels anticipated, and the proposed effective date of the new compensation levels. The letter stated that "[d]ue to the model's complexity, and to encourage your participation in the review process, we [the Salary Commission] are providing a two-month comment period before final adoption." Further, the letter informed recipients about the Salary Commission's scheduled meetings in November 2006 and December 2006 and strongly urged recipients "to take a look at the model beforehand and attend *both* meetings." (Italics in original.) The letter enclosed a copy of the revised salary model and included instructions on viewing the Salary Commission's website.

At its January 12, 2007 meeting, the Salary Commission voted to approve salary increases for directors and deputies.

In the absence of law prescribing the manner or degree of consultation that is to occur between the Salary Commission and

¹ Maui County Council v. Thompson, 84 Hawaii 105, 106, 929 P.2d 1355, 1356 (1996) (alteration in original).

² Black's Law Dictionary 335 (8th ed. 2004).

Carol A. Summers, Chair
Civil Service Commission
May 7, 2007
Page 3

other boards and commissions, we believe that Salary Commission decisions on policy matters within their jurisdiction are entitled to some deference. The Charter authorizes the Salary Commission to establish the compensation of various County officers. The exact method by which the Salary Commission consults with County boards and commissions is a matter left to the Salary Commission's reasoned judgment. Although the Salary Commission could have consulted with boards and commissions in any number of different ways, we cannot say, based on the record, that the methods and timetable chosen by the Salary Commission were so unreasonable as to constitute a violation of the Charter. Regardless of the importance of the underlying policy issues at stake, it is not appropriate for this Department to substitute its judgment as to what constitutes appropriate consultation for the reasoned judgment of the responsible agency.

2. Whether or not the Salary Commission, via letter dated January 23, 2007, has the authority to require the four commissions which have appointing authority for department heads to permanently appoint a member to attend the Salary Commission's meetings and key sub-committee meetings essentially passing off its responsibility in the consultation process.

The Salary Commission's letter dated January 23, 2007 stated, in part:

We recognize that the Civil Service Commission voiced its concern that the Sunshine Law and other factors interfered with the timing of the Salary Commission's decision. Consequently, the Commission voted at its January 12th meeting to formally **encourage** all four commissions with whom the County Charter requires us to consult (Civil Service Commission, Liquor Commission, Fire and Public Safety Commission, and Police Commission) to appoint a permanent representative to the Salary Commission....Although we originally considered visiting other commissions, that format required that our members visit *four* other meetings and did not allow for input from the other commissions during our own meeting. (Bold added; italics in original).

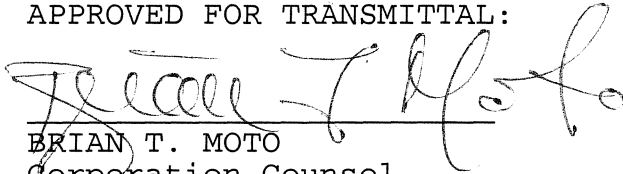
A copy of the letter has been attached hereto as Exhibit "2".

The letter does not **require** that the four commissions appoint a member to attend the Salary Commission's meetings but merely **encourages** such commissions to do so. It remains for each

Carol A. Summers, Chair
Civil Service Commission
May 7, 2007
Page 4

commission to decide how best to communicate with the Salary
Commission.

APPROVED FOR TRANSMITTAL:



BRIAN T. MOTO
Corporation Counsel

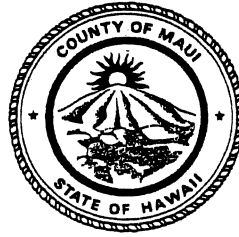
Enclosures: Exhibits "1" and "2"

cc: Douglas Levin, Chair, Salary Commission
Lynn Krieg, Director of Personnel Services
John D. Kim, Deputy Corporation Counsel
Michele White, Legal Assistant

S:\ALL\Advisory\TFV\salary commission.wpd

ALAN M. ARAKAWA
Mayor

KEITH A. REGAN
Managing Director



RECEIVED
2006 OCT 30 PM 4:32
OFFICE OF THE MAYOR

COUNTY OF MAUI
OFFICE OF THE MAYOR
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

October 30, 2006

TRANSMITTAL

TO: Managing Director, Office of the Mayor
Director & Deputy Director, Department of Planning
Director & Deputy Director, Department of Finance
Director & Deputy Director, Department of Housing and Human Concerns
Director & Deputy Director, Department of Water Supply
Director & Deputy Director, Department of Public Works & Environmental
Management
Director & Deputy Director, Department of Parks & Recreation
Director & Deputy Director, Department Liquor Control
Prosecuting Attorney & First Deputy Prosecuting Attorney, Department of the
Prosecuting Attorney
Chief of Police & Deputy Chief of Police, Department of Police
Fire Chief & Deputy Fire Chief, Department of Fire and Public Safety
Corporation Counsel & First Deputy Corporation Counsel, Department of
Corporation Counsel
Director & Deputy Director, Department of Personnel Services
Director & Deputy Director, Department of Transportation
County of Maui Civil Service Commission
County of Maui Fire and Public Safety Commission
County of Maui Board of Water Supply
County of Maui Liquor Control Commission
County of Maui Police Commission

SUBJECT: SALARY COMMISSION'S REVISED SALARY MODEL

At its regular meeting of Friday, October 13, 2006, the Salary Commission tentatively approved a revised model for determining the compensation of the directors and deputy directors for the various departments of the County of Maui. This includes compensation levels we anticipate would begin on January 1, 2007, pending final decision by the Commission.

The revised model is complex, weighting a number of factors together to arrive at what we believe is fair and appropriate compensation. Due to the model's complexity, and to encourage your participation in the review process, we are providing a two-month comment period before final adoption.

- At our regular meeting scheduled for Friday, November 17, 2006, we will include an explanatory seminar of the model, followed by a question and answer session.
- At our subsequent meeting on Friday, December 15, 2006, we will operate in the traditional format, taking public testimony and beginning our final deliberations on the proposal.

If this matter is important to you, we strongly encourage you to take a look at the model beforehand and attend *both* meetings. The first meeting will give you an opportunity to understand the model and the extensive decision making that took place when determining the proposed salaries. The traditional format of the second meeting will not allow us to answer your questions directly, but you will have an opportunity to testify on the model.

A copy of the revised model is attached. You may also view or print the model by visiting the County of Maui website at www.mauicounty.gov. To find the model within the County's website, please scroll down the "Boards and Commissions" column and click on "Salary Commission." Next, click on "Issues," and you will find seven files to review.

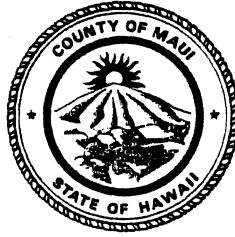
Sincerely,



Douglas Levin

Chair, Salary Commission

CHARMAINE TAVARES
Mayor



RECEIVED
2007 JAN 23 PM 4:08
OFFICE OF THE MAYOR

COUNTY OF MAUI
OFFICE OF THE MAYOR
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793

January 23, 2007

Honorable Charmaine Tavares
Mayor, County of Maui
200 S. High Street
Wailuku, Hawaii 96793

APPROVED FOR TRANSMITTAL

Charmaine Tavares 01-23-07
Mayor Date

For Transmittal to:

Carol Summers, Chair, and
Members of the Civil Service Commission
200 S. High Street
Wailuku, Hawaii 96793

Dear Chair Summers:

SUBJECT: SALARY INCREASE FOR DEPARTMENT HEADS AND DEPUTIES

At its January 12, 2007 meeting, the Salary Commission voted to approve salary increases for the directors and deputies of the following departments: Corporation Counsel, Finance, Fire and Public Safety, Housing and Human Concerns, Liquor Control, Management, Parks and Recreation, Personnel, Planning, Police, Prosecuting Attorney, Public Works and Environmental Management, Transportation, and Water. The salary increases are retroactive to January 2, 2007. The approved salaries and the "salary model" on which it is based are attached.

The approval of these salaries is an important milestone in the continuing efforts of the Salary Commission to improve the timing and methodology employed in determining appropriate compensation for our hard-working County department heads. For the first time, the Commission approved salaries based on a salary model, which took into account factors such as cost of living, salary inversion, professional requirements, the breadth of a department head's responsibility, and comparisons to peers in other Hawaii counties. The Commission held a two-month comment period, including an informal question-and-answer session, to encourage participation in the process by department heads, your commission, and the public.

EXHIBIT " 2 "

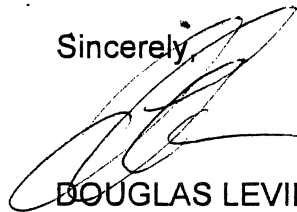
Overall, the methodology and the comment period were warmly received. There were exceptions, however, primarily focused on the speed of the process and the means for determining the breadth of a department head's responsibility. We acknowledge and appreciate the concerns raised by your commission both in writing and in person. As these issues were considered at the January meeting and in meetings prior, the commissioners did not discount these factors, but they did conclude that time was of the essence. As such, the commissioners approved the salaries at the January meeting — with the intention of addressing the concerns that were raised during the coming year as the Commission works on the next salary adjustment tentatively schedule for January 1, 2008. Please be assured that the Commission is committed to continuing to improve both the methodology and the process for reviewing salaries.

We recognize that the Civil Service Commission voiced its concern that the Sunshine Law and other factors interfered with the timing of the Salary Commission's decision. Consequently, the Commission voted at its January 12th meeting to formally encourage all four commissions with whom the County Charter requires us to consult (Civil Service Commission, Liquor Commission, Fire and Public Safety Commission, and Police Commission) to appoint a permanent representative to the Salary Commission. The responsibilities of these representatives will be to attend our meetings and key subcommittee (i.e., Salary Model Subcommittee) meetings, act as a consultative party during discussions, report back to their commissions, and bring their commissions' comments back to us. Although we originally considered visiting other commissions, that format required that our members visit *four* other meetings and did not allow for input from the other commissions during our own meeting.

For your information, the Salary Commission's tentative schedule is as follows: County Council and Mayoral salaries will be considered in the next few months, followed by consideration of department heads' and deputies' 2008 adjustment late in the spring as the union collective bargaining agreement, excluded managerial employees rate schedule, and County budget are completed and available for our use.

We appreciate this opportunity to serve the people of the County of Maui, and look forward to working with you in the coming year.

Sincerely,

A handwritten signature in black ink, appearing to read 'D. Levin', written over the word 'Sincerely,'.

DOUGLAS LEVIN, Chair
Salary Commission

Attachment