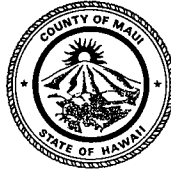


CHARMAINE TAVARES
Mayor

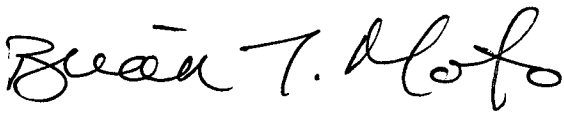


BRIAN T. MOTO
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7742
FACSIMILE: (808) 270-7152

May 4, 2010

MEMO TO: Gladys C. Baisa
Council Member

FROM: Brian T. Moto
Corporation Counsel 

SUBJECT: Proposed Charter Amendment Relating to Financial
Disclosure Statements (PAF 10-075)

A. Introduction and summary of issue presented.

By memorandum dated April 19, 2010, you submitted to the Department of the Corporation Counsel a draft resolution entitled, "Proposing Amendments to the Revised Charter of the County of Maui (1983), As Amended, Relating to Financial Disclosure Statements of Candidates for Elective County Office", for review and approval as to form and legality.

The draft resolution would amend Section 10-3(3), Revised Charter of the County of Maui (1983), as amended ("Charter"), pertaining to financial disclosure statements, by adding the following sentences:

A candidate for elective county office shall file a financial disclosure statement concurrently with the filing of nomination papers. Nomination papers filed without a completed financial disclosure statement shall be deemed incomplete.

This memorandum analyzes whether the proposed Charter provisions would violate state election law regarding nomination papers.

B. Short answers.

The Charter may be amended to require that financial disclosure statements be filed concurrently with the filing of

MEMO TO: Gladys C. Baisa
Council Member
DATE: May 4, 2010
Page 2

nomination papers.

However, the proposed Charter amendment deeming certain nomination papers incomplete would violate Section 12-3, Hawaii Revised Statutes, and other state election laws pertaining to nomination papers. Such amendment would therefore be invalid.

C. Analysis and discussion.

1. Although the Constitution of the State of Hawaii ("Hawaii Constitution") requires each county to adopt a code of ethics applicable to elected and appointed officers and employees, the Hawaii Constitution reserves to the State Legislature the power to enact laws of statewide concern.

Article XIV of the Hawaii Constitution, pertaining to the code of ethics, states, in part:

The people of Hawaii believe that public officers and employees must exhibit the highest standards of ethical conduct and that these standards come from the personal integrity of each individual in government. To keep faith with this belief, the legislature, each political subdivision and the constitutional convention shall adopt a code of ethics which shall apply to appointed and elected officers and employees of the State or the political subdivision, respectively, including members of the boards, commissions and other bodies.

....
Each code of ethics shall include, but not be limited to, provisions on gifts, confidential information, use of position, contracts with government agencies, post-employment, financial disclosure and lobbyist registration and restriction. The financial disclosure provisions shall require all elected officers, all candidates for elective office and such appointed officers and employees as provided by law to make public financial disclosures. Other public officials having significant discretionary or fiscal powers as provided by law shall make confidential financial disclosures. All financial disclosure statements shall include, but not be limited to, sources and amounts of income, business ownership, officer and director positions, ownership of real property, debts, creditor interests in insolvent businesses and the names of persons represented before government agencies.

MEMO TO: Gladys C. Baisa
Council Member
DATE: May 4, 2010
Page 3

Article VIII, Section 2 of the Hawaii Constitution, pertaining to local self-government, states, in part:

Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law....

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

However, Article VIII, Section 6 of the Hawaii Constitution, pertaining to statewide laws, states:

This article [VIII] shall **not** limit the power of the legislature to enact laws of **statewide concern**. (Emphases added.)

Section 50-15, Hawaii Revised Statutes, pertaining to county charter commissions and the reserved powers of the State Legislature, states:

Notwithstanding the provisions of this chapter [50], there is expressly reserved to the state legislature the power to enact all laws of general application throughout the State on matters of concern and interest and laws relating to the fiscal powers of the counties, **and neither a charter nor ordinances adopted under charter shall be in conflict therewith.** (Emphasis added.)

Therefore, although the County of Maui is empowered to adopt a code of ethics applicable to elected and appointed officers and employees, the Hawaii Constitution and Hawaii Revised Statutes reserve to the State Legislature the power to enact laws of statewide concern.

2. Section 12-3, Hawaii Revised Statutes, and other state election laws pertaining to nomination papers, are laws of statewide concern.

Section 12-3, Hawaii Revised Statutes, sets forth requirements for the filing of nomination papers by candidates. Section 12-3 states, in part:

- (a) No candidate's name shall be printed upon any

MEMO TO: Gladys C. Baisa
Council Member
DATE: May 4, 2010
Page 4

official ballot to be used at any primary, special primary, or special election unless a nomination paper was filed in the candidate's behalf and in the name by which the candidate is commonly known. The nomination paper shall be in a form prescribed and provided by the chief election officer containing substantially the following information:

(1) A statement by the registered voters signing the form that they are eligible to vote for the candidate;

(2) A statement by the registered voters signing the form that they nominate the candidate for the office identified on the nomination paper issued to the candidate;

(3) The residence address and county in which the candidate resides;

(4) The legal name of the candidate, the name by which the candidate is commonly known, if different, the office for which the candidate is running, and the candidate's party affiliation or nonpartisanship; all of which are to be placed on the nomination paper by the chief election officer or the clerk prior to releasing the form to the candidate;

(5) Space for the name, signature, date of birth, last four digits of the social security number, and residence address of each registered voter signing the form, and other information as determined by the chief election officer; provided that no more than the last four digits of a voter's social security number shall be required;

(6) A sworn certification by self-subscribing oath by the candidate that the candidate qualifies under the law for the office the candidate is seeking and that the candidate has determined that, except for the information provided by the registered voters signing the nomination papers, all of the information on the nomination papers is true and correct;

(7) A sworn certification by self-subscribing oath by a party candidate that the candidate is a member of the party;

(8) A sworn certification by self-subscribing oath, where applicable, by the candidate that the candidate has complied with the provisions of article II, section 7, of the Constitution of the State of Hawaii;

(9) A sworn certification by self-subscribing oath by the candidate that the candidate is in compliance with section 831-2, dealing with felons, and is eligible to run for office; and

MEMO TO: Gladys C. Baisa
Council Member
DATE: May 4, 2010
Page 5

(10) The name the candidate wishes printed on the ballot and the mailing address of the candidate.

.....
(f) Nomination papers which are incomplete and do not contain all of the certifications, signatures, and requirements of this section shall be void and will not be accepted for filing by the chief election officer or clerk.

Section 12-1, Hawaii Revised Statutes, makes Section 12-3, and other sections of Chapter 12 of the Hawaii Revised Statutes, applicable to all candidates statewide. Section 12-1 states:

All candidates for elective office, except as provided in section 14-21, shall be nominated in accordance with this chapter and not otherwise.¹
(Emphases added.)

Administrative rules adopted by the Office of Elections implement Section 12-3, Hawaii Revised Statutes, and other related statutes. Section 3-173-1(a), Hawaii Administrative Rules, pertaining to nomination papers, states:

Any individual wishing to take out nomination papers to file for candidacy, pursuant to HRS §12-3, shall complete an application form before receiving the nomination papers. The application for nomination papers shall be in the form prescribed and provided by the chief election officer containing substantially the following information:

- (1) Legal Name;
- (2) Name commonly known as (if different from legal name);
- (3) Legal residence address in Hawaii;
- (4) If no street address, a description of location of residence;
- (5) Mailing address (if different from previously provided address);
- (6) Telephone number;
- (7) Date Birth;
- (8) Gender;
- (9) Social Security number;
- (10) Statement of United States citizenship;
- (11) Statement of legal residence in the State of

¹ § 14-21, Hawaii Revised Statutes, pertains to the nomination of presidential electors and alternates.

MEMO TO: Gladys C. Baisa
Council Member
DATE: May 4, 2010
Page 6

- Hawaii;
- (12) Statement of being a registered voter of the State of Hawaii;
 - (13) Statement regarding whether the applicant has a current felony conviction;
 - (14) Contest title;
 - (15) Jurisdiction or district;
 - (16) Party affiliation or nonpartisan;
 - (17) Party membership;
 - (18) Name of candidate's contact person;
 - (19) Relationship of contact person;
 - (20) Contact person's telephone numbers; and
 - (21) An affirmation by the application [sic] that the information is true and correct and that the Chief Election Officer and/or the City/County Clerk may verify the information on the application.

Because Section 12-3, Hawaii Revised Statutes, and Section 3-173-1, Hawaii Administrative Rules, are laws of general application throughout the state, Section 12-3 and Section 3-173-1 are laws of statewide concern within the meaning of Article VIII, Section 6 of the Hawaii Constitution.²

3. The proposed Charter amendment deeming certain nomination papers incomplete conflicts with Section 12-3, Hawaii Revised Statutes, and other state election laws.

The Hawaii Supreme Court has held that a local law conflicts with a state statute governing matters of statewide concern when the local law attempts to "enter an area fully occupied" by the state statute, or "covers the same ground" as (*i.e.*, is duplicative of, or coextensive with) the state statute.³

The plain language of Sections 12-1 and 12-3, Hawaii Revised Statutes, and of administrative rules adopted by the Office of Elections, supports the conclusion that state election laws were intended to apply to all candidates for elective office (except for

² See Save Sunset Beach Coalition v. City and County of Honolulu, 102 Hawai'i 465, 481, 78 P.3d 1, 17 (2003) (citing Marsland v. First Hawaiian Bank, 70 Haw. 126, 133, 764 P.2d 1228, 1232 (1988)); see also Richardson v. City and County of Honolulu, 76 Hawai'i 46, 66 (1994).

³ Richardson v. City and County of Honolulu, 76 Hawai'i at 66-67.

MEMO TO: Gladys C. Baisa
Council Member
DATE: May 4, 2010
Page 7

presidential electors and alternates) and to all nomination papers filed by such candidates. Neither Section 12-3 nor Section 3-173-1, Hawaii Administrative Rules, makes the filing of financial disclosure statements a precondition to the successful filing of nomination papers, and neither deems nomination papers filed without a financial disclosure statement incomplete.

State election laws apply to county elections even though the elections are necessitated by county charters and not by state laws.⁴ State election laws do not allow counties to add to, detract from, or otherwise modify state law regarding the review and acceptance of nomination papers by election officials.

By deeming certain nomination papers incomplete, the proposed Charter amendment attempts to regulate a subject matter over which the state has retained exclusive power to legislate. State law already addresses the form and content of nomination papers, and the proposed Charter amendment, as drafted, encroaches upon an area that the Legislature has manifested its intent to fully occupy.

Therefore, the proposed Charter amendment deeming certain nomination papers incomplete conflicts with Section 12-3, Hawaii Revised Statutes, and related state election laws. Such Charter amendment is preempted by state law and would be void. To deem nomination papers incomplete based on a failure to file adequate financial disclosure statements would require an act of the State Legislature.

4. The proposed Charter amendment changing the deadline for filing a financial disclosure statement is not preempted by state law.

The proposed Charter amendment that would require financial disclosure statements to be filed concurrently with the filing of nomination papers, instead of within fifteen days of filing nomination papers, does not conflict with state election law, and is not preempted by it. The proposed amendment concerns the timing of the filing of financial disclosure statements, not the completeness of nomination papers for an election, and is a subject matter which counties may determine.

xc: Jeffrey Kuwada, County Clerk
Webpage

S:\ALL\BTM\COUNCIL\MEMBERS\Baisa.memo.nomination papers.May 2010.wpd

⁴ Op. Att'y Gen. No. 85-7, at 2.