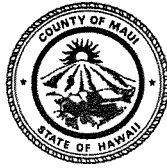


ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
TELEPHONE: (808) 270-7741  
FACSIMILE: (808) 270-7152

May 22, 2012

**MEMORANDUM**

**T O:** G. Riki Hokama, Chair  
Policy Committee

**F R O M:** Edward S. Kushi, Jr.  
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to read "Edward S. Kushi, Jr.", is written over the name in the "FROM" field.

**SUBJECT: PROPOSED CHARTER AMENDMENTS (APPROVAL OF PROPOSED CHARTER AMENDMENTS BY VOTERS) (POL-10(15))**

We respond to the inquiries set forth in your request of April 17, 2012 as follows:

- 1) May the County, through the Charter, change the manner of calculating whether a Charter amendment has been approved by the voters? Please explain.

SHORT ANSWER: No.

For purposes of this response, we have assumed that the reference to changing "the manner of calculating whether a Charter amendment has been approved" specifically concerns the current method wherein blank and spoiled ballots are not counted in determining the majority of votes.<sup>1</sup>

Chapter 50, Hawaii Revised Statutes ("HRS") constitutes the enabling statutory law on charter commissions.<sup>2</sup> Section 50-10, HRS, in pertinent part, specifically states:

"Blank ballots and spoiled ballots shall not be counted in determining the majority of the votes." (emphasis added)

<sup>1</sup> Section 50-10, Hawaii Revised Statutes ("HRS")

<sup>2</sup> HGEA v. County of Maui, et al.; 59 Haw. 65 (1978), at page 78.

Chapter 50's predecessor, Chapter 143A, HRS, was amended in 1967 by Act 235 of the State Legislature to specifically mandate this method of determining whether a majority of votes is attained:

"The provisions of the bill make it clear that an elector may vote for or against the proposed charter. An elector may also vote for the proposed charter and any proposed alternatives. In determining whether a majority of the electors have voted for or against the charter or for or against any alternatives, blank ballots and spoiled ballots shall not be counted. This is fair because otherwise blank ballots and spoiled ballots would be counted as a vote against the charter."<sup>3</sup>

Further, Section 50-11, HRS, enables the counties to amend or revise its respective charters and states:

"Every charter established under this chapter<sup>4</sup> 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." (emphasis added).<sup>5</sup>

We also note that a comparison with the other counties' charter language regarding their determination of what constitutes a "majority of voters" in charter amendment elections is instructive and consistent, to-wit:

Maui County:

"Should the majority of voters voting thereon approve the proposed amendments to the charter, the amendments shall become effective . . ."; Article 14, Section 14-2.3.

City and County of Honolulu:

"No amendment or revision of this charter shall be effective unless approved by a majority of voters voting thereon."; Article 15, Section 15-103.

Kauai County:

"Should the majority of the voters voting thereon approve the proposed amendments to this charter, the amendments shall become effective at the time . . ."; Article 24, Section 24.02(C).

---

<sup>3</sup> SC Rep. 620, 1967 State Legislature.

<sup>4</sup> Maui County's initial charter became effective as of January 2, 1969.

<sup>5</sup> As previously set forth in Section 50-10, HRS, blank and spoiled ballots shall not be counted in determining the majority of the votes.

G. Riki Hokama, Chair  
Policy Committee  
May 22, 2012  
Page 3

"If a majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time . . ."; Article 24, Section 24.03(B).

Hawaii County:

"If the majority of the voters voting upon a charter amendment votes in favor of it or a new charter, if a new charter is proposed, the amendment or new charter shall become effective at the time fixed in the amendment or charter."; Article 15, Section 15-3.

As of the date of this memo response, we have confirmed that City and County of Honolulu and Kauai, like Maui, follow the direction set forth in Section 50-10, HRS, and do not count blank or spoiled ballots in determining whether a majority has been attained. We are still waiting confirmation from Hawaii County.

Lastly, Section 50-15, HRS, 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 a charter shall be in conflict therewith." Although it was determined that charter provisions relating to Maui County's executive and administrative structure and organization (i.e., departments of water supply, police and liquor control) superseded State laws in conflict therewith<sup>6</sup>, we believe that based on the specific and unambiguous language set forth in Section 50-10, HRS, the State has pre-empted the field in determining what constitutes a majority of votes for purposes of county charter amendment elections.

Based on the foregoing reasons, we do not believe that a Maui County charter amendment that would change the method of determining what constitutes a majority of votes in charter amendment elections, specifically with regard to blank and spoiled ballots, would withstand a legal challenge.

- 2) If your answer to the first question is yes, please advise whether the language below (relying, in part, on Article XVII, Section 2, of the State Constitution) would provide an appropriate means for proposing such an amendment to the Charter. Feel free to recommend any improvements to the language that are appropriate.

Based on our response to the first question, our office will not offer comment.

---

<sup>6</sup> Note 2, Id.

G. Riki Hokama, Chair  
Policy Committee  
May 22, 2012  
Page 4

- 3) As an alternative to the proposed amendment to Subsection 14-2(3) above, and depending on the policy direction of the Council, please advise whether the language below is also a viable option. Again, feel free to recommend any improvements to the language that are appropriate.

Based on our response to the first question, our office will not offer comments.

Reviewed and approved  
for transmittal:

  
PATRICK K. WONG  
CORPORATION COUNSEL

S:\ALL\ESK\COUNCIL\Memos\memo to hokama re charter amendments.doc