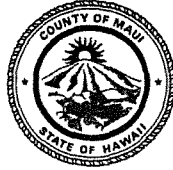


ALAN M. ARAKAWA
Mayor



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

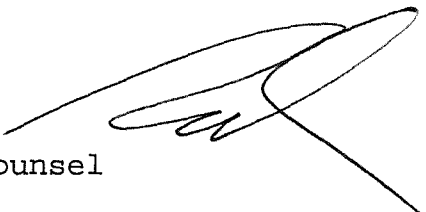
May 22, 2012

MEMORANDUM

T O: G. Riki Hokama, Chair
Policy Committee

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

SUBJECT: PROPOSED CHARTER AMENDMENTS (CHARTER COMMISSION'S PROPOSALS) (POL-10(12))



Responding to your request of May 11, 2012 in the order presented:

1. If the Charter Commission rejects a Council alternative, and the Council takes no affirmative action, what becomes of the rejected alternative once the Charter Commission submits the proposed charter to the County Clerk? Is the rejected alternative placed on the general-election ballot in November in competition with the corresponding Charter Commission proposal? Please explain.

Yes. As expressly set forth in Section 50-9, Hawaii Revised Statutes ("HRS"), "... Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft." (emphasis added)

G. Riki Hokama, Chair
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May 22, 2012
Page 2

2. What does it mean for the Council to "recall" a rejected alternative? If the Council wants to recall a rejected alternative, what process does it follow? If the Council recalls an alternative through the adoption of a resolution, please transmit a form of a resolution that, if adopted, would constitute a recall of the rejected alternative. If the Council does not recall an alternative through the adoption of a resolution, please transmit the appropriate form of legislation.

In the context of Section 50-9, HRS, "recall" by the Council would be its withdrawal of the alternative that was previously submitted and rejected by the Charter Commission.¹

As to how and by what method the Council would process a recall, similar to the discussion regarding how the Council processed its alternatives to the Commission's initial report as stated in this writer's memorandum dated April 2, 2012 (copy attached hereto and marked as Exhibit "1"; response to question no. 2, at page 2), the Council may propose and adopt a resolution or adopt a committee report specifically stating its recall. However, as a practical/logistical matter, the Council would be hard-pressed to process, complete and adopt either a resolution or committee report within ten(10) days of its receipt of the Commission's notice of rejection.² Notwithstanding the stated ten (10) day time period, Section 50-9, HRS, does not set forth a time deadline within which the Commission is required to submit its final report

¹ By Act 235, 1967 State Legislature, Section 143A-9, HRS (the predecessor to Section 50-9, HRS) was amended to provide for recall.

"Section 143A-9 is amended to allow the Board of Supervisors to recall any of the alternates that are rejected by the Charter Commission. This would give the Board another opportunity to review the necessity of such an alternative." SC Rep. No. 620.

² Section 50-9, HRS, in pertinent part, states:

"...The legislative body of the county may within ten days after receiving such notification recall any or all of the alternative proposals rejected by the commission..."

G. Riki Hokama, Chair
Policy Committee
May 22, 2012
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to the county clerk.³ The only time deadline imposed on the Commission to submit its report to the county clerk is set forth in Section 14-3 of the Maui County Charter, which is within sixteen (16) months after the commission has been appointed, which deadline for this Commission would be July 31, 2012.⁴

Based on the above, we believe it would reasonable and meet and satisfy the spirit of the law for the Commission to allow the Council enough or additional time to process and adopt any "action" to complete any recall proceedings. Allowing such additional time for the Council to consider a recall, and if a recall is indeed adopted, would in essence, lessen the Commission's responsibilities, in that it would then not process the previously rejected alternative(s) to the County Clerk.

Accordingly, we suggest and advise that if the Council is inclined to recall any of its alternatives rejected by the Commission, the Council send a formal request to the Commission for

³ Section 50-9, HRS, in pertinent part states:

"...Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft."

⁴ Section 14-3 of the Maui Charter, entitled Mandatory Review, in pertinent part, states:

"...The commission may propose amendments to the charter or draft a new charter which shall be submitted to the county clerk within sixteen (16) months after such commission has been appointed..."

The 2011-12 Maui Charter Commission was official appointed as of April 1, 2011.

G. Riki Hokama, Chair
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more, additional time to process such a recall. However, we further suggest and advise that any request for more, additional time be reasonable, and set a date certain for Council action, to allow and enable the Commission to meet its deadline for submittal to the County Clerk well in advance of July 31, 2012.

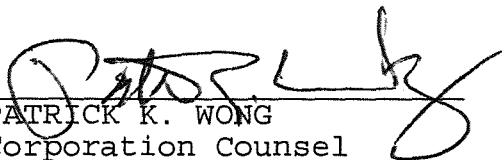
3. Is the Council permitted to modify a rejected alternative and transmit the modified proposal to the County Clerk for placement on the general-election ballot, in competition with the corresponding Charter Commission proposal?

Yes, provided said "modified" proposal is submitted directly to the County Clerk, and not back to the Commission, pursuant to Section 14-1(1) of the Charter.

4. Is the Council permitted to place an alternative proposal on the ballot that has not been considered by the Charter Commission, pursuant to the authority set forth in Section 14-1 of the Charter (i.e., by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council). If so, would that alternative proposal be placed on the general-election ballot, in competition with the corresponding Charter Commission proposal?

Yes. In the event competing proposals are placed on the ballot, and both proposals receive a majority vote, the proposal receiving the higher majority of yes votes would prevail (See copy of memorandum to Roy T. Hiraga, County Clerk, from our office dated October 31, 2002, attached hereto and marked as Exhibit "2").

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel

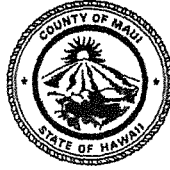
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Enclosures

cc: Jeffrey Kuwada, County Clerk
Ken Fukuoka, Director of Council Services

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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) 270-7740
FACSIMILE: (808) 270-7152

April 2, 2012

MEMO TO: G. Riki Hokama, Chair
Policy Committee

FROM: 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 "FROM:" line of the memo.

SUBJECT: PROPOSED CHARTER AMENDMENTS (CHARTER COMMISSION'S PROPOSALS) (POL-10(12))

Responding to your request of March 29, 2012 in the order presented:

1. Does Section 14-1(1) of the revised Charter of the County of Maui (1983), as amended ("Charter"), apply to the procedure by which the Council may propose alternatives to the Charter Commission's proposed amendments, pursuant to Section 50-8, Hawaii Revised Statutes ("HRS"), in addition to amendments proposed by the Council for placement directly on the ballot?

RESPONSE: No, as to any Council-proposed alternatives to the Charter Commission's proposed amendments.

Yes, as to any Council-proposed charter amendments sent directly to the County Clerk for placement directly on the ballot.

2. May the Council propose alternatives to the Charter Commission on its proposed amendments, pursuant to Section 50-8, HRS, through a resolution that is not subject to the two-reading requirement under Section 14-1(1) of the Charter?

RESPONSE: Yes. We believe the two-reading requirement as set forth in Section 14-1(1) applies only to Council-initiated charter amendments that are sent directly to the County Clerk, and not to proposed Council alternatives to Charter Commission amendments.

EXHIBIT " 1 "

G. Riki Hokama, Chair
Policy Committee
April 2, 2012
Page 2

May the Council proposed alternatives to the Charter Commission on its proposed amendments, pursuant to Section 50-8, HRS, through the adoption of recommendations set forth in a committee report or other document?

RESPONSE: Yes, subject to Section 4-1 of the Charter which states:

"Actions of the Council. Every legislative act of the council shall be by ordinance, unless otherwise provided herein. Other acts of the council may be by resolution."

Section 50-8, HRS, merely states, in pertinent part:

"Within thirty days after receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with alternatives to the commission for its study."

Neither Section 50-8 nor 50-9, HRS, sets forth a requirement that the legislative body must transmit its "alternatives" to the Charter Commission via any particular document, be it a duly adopted resolution or otherwise.

Accordingly, we believe that the formal process for the Council to transmit alternatives to the Charter Commission would be through a duly adopted resolution. However, since Sections 50-8 and 50-9, HRS, as well as Section 14-3 of the Charter itself, are silent as to mandating what formal, specific document is required to transmit said alternatives, we believe that if the full Council chose to adopt a committee report instead of, or in lieu of, a duly adopted resolution, and transmit said committee report to the Charter Commission, the requirements of the Charter Commission/legislative body process would be satisfied.

3. Must the County Clerk publish a digest following passage on first reading of a resolution proposing a Charter amendment?

RESPONSE: No. Section 4-2(4) of the Charter, as well as Rule 6(B)(9) of the Rules of the Council, only reference digest publication of ordinances, not resolutions.

If not, is there any minimum number of days which must pass between the "two readings on separate days" requirement under Section 14-1(1) of the Charter?

G. Riki Hokama, Chair
Policy Committee
April 2, 2012
Page 3

RESPONSE: No, subject to "sunshine law" posting requirements of agendas.

4. What constitutes an "alternative" under section 50-8, HRS?

RESPONSE: Unknown. Said HRS section is silent. However, the rule of reason should apply and there should be a relationship between the proposal by the Charter Commission and the alternative being suggested by the Council.

For instance, would a recommendation that a proposal be deleted be considered an alternative?

RESPONSE: Yes.

What about comments in the nature of those made in response to Proposals 6 or 13 in the attached Committee Report 02-58, at pages 5 and 7?

RESPONSE: Yes.

5. Under Section 50-9, HRS, the Charter Commission shall report to the Council any rejection of alternatives presented. The Council then has ten days after receiving notification of such rejection to "recall any or all of the alternative proposals rejected by the commission." Is the recall mechanism for the Council to present directly to the Clerk any alternatives rejected by the Charter Commission?

RESPONSE: Yes.

Would such a recall require the Council to follow the requirements of Section 14-1(1) of the Charter, requiring the passage of a resolution on two readings within the ten-day period? Please explain the process.

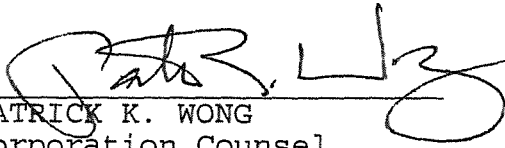
RESPONSE: Yes, but not within the "ten-day period". We believe the "recall" terminology or process is intended to authorize to the Council to act, on its own initiative, on any proposed amendments to the Charter which have been rejected by the Charter Commission. We do not believe the Council is required to complete the "recall" process with any time period, let alone the referenced ten-day period, subject however, to any time deadline

G. Riki Hokama, Chair
Policy Committee
April 2, 2012
Page 4

for transmittal of any proposed charter amendments to the County Clerk.

If further discussion or clarification is needed, we will be present at any future Policy Committee meetings on this matter.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel

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ESK:lak

cc: Jeffrey Kuwada, County Clerk
Ken Fukuoka, Director of Council Services

Opinion 2002-37

JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
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

October 31, 2002

MEMO TO: Roy T. Hiraga, County Clerk

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

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.

EXHIBIT " 2 "

Roy T. Hiraga, County Clerk
October 31, 2002
Page 2

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.

Roy T. Hiraga, County Clerk
October 31, 2002
Page 3

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.

²Cavetano 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).

Roy T. Hiraga, County Clerk
October 31, 2002
Page 5

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.

BTM:ko

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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.