

ALAN M. ARAKAWA
Mayor



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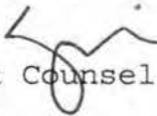
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March 7, 2017

MEMORANDUM

T O: Alan M. Arakawa, Mayor

F R O M: Gary Y. Murai 
Deputy Corporation Counsel

SUBJECT: POWERS OF THE SALARY COMMISSION AS PER THE COUNTY
CHARTER

This letter responds to your written request, dated February 23, 2017, in which you asked for a Corporation Counsel opinion on the questions presented below.

I. BACKGROUND

You informed us that the Maui County Salary Commission ("commission") will be reviewing the salaries for members of the Maui County Council ("council members") on March 10, 2017. You noted that the salaries for council members are the highest of all legislators in the State of Hawaii, and that the position of council member is currently interpreted as being a part-time position. You also noted that if the position of council member may be deemed to be full-time, council members should be entitled to full-time benefits.

II. QUESTIONS PRESENTED

A. Whether the County Charter authorizes the commission to determine whether council members are full-time or part-time employees.

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B. Whether the commission is authorized to designate council members as full-time employees so they may be entitled to receive the same benefits as other full-time employees of the County of Maui.

III. BRIEF ANSWER

The answer to both questions is no. With regard to elected officials, the Revised Charter of the County of Maui (1983), as amended (hereinafter "charter"), only authorizes the commission to determine compensation.

IV. ANALYSIS

A. The commission does not have the authority to determine whether a council member is a full-time or part-time employee.

Charter Section 8-17.1 provides in pertinent part:

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 commission shall consult with those boards and commissions which have appointing authority for department heads.

When interpreting a charter provision, the Hawaii Supreme Court wrote:

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

Therefore, read plainly, Charter Section 8-17.1 charges the commission solely with the duty of determining the compensation for elected officials, appointed directors and deputy directors.² Moreover, Charter Section 8-17.1 is silent as to what factors the commission should consider when determining appropriate compensation for council members and makes no reference to full-time or part-time status.

However, as you stated, it has been generally accepted that council members are part-time legislators, who may have employment or business interests outside of their elected office.³ Prior commissions have generally based their compensation decisions for council members on factors such as the qualifications, duties and responsibilities of the office; as well as the cost of living in Maui County, the compensation of other state and county legislators and the county's ability to pay.

- B. The commission does not have the authority to designate council members as full-time employees.

The same analysis used above applies to whether the commission may designate council members as full-time employees. Charter Section 8-17.1 does not provide the commission with the duty or authority to designate council members as full-time employees.

¹Maui County Council v. Thompson, 84 Hawai'i 105, 106 (1996)

²Section 7-4 of the Charter provides that the salary of the mayor shall be determined by the commission, while Section 8-17.1 of the Charter provides that the commission shall determine the compensation of elected officials.

³In a December 27, 2001 Corporation Counsel opinion to Council Services Director Ken Fukuoka regarding paid vacation leave for council members, this office relied on §79-1 and §78-6, H.R.S. and opinions by the Corporation Counsel for the City and County of Honolulu in construing council members as part-time employees. However, §79-1 and §78-6, H.R.S. were repealed in 2002 and we are not aware of any subsequent law or legal opinion that addresses whether council members are full-time or part-time.

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V. CONCLUSION

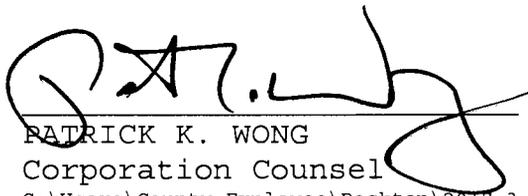
We answer both questions posed in the negative. With regard to council members, the charter limits the scope of the commission's authority to determining their compensation.⁴ When doing so, the commission has historically considered the qualifications, duties, and responsibilities of council members, the cost of living, comparable legislative salaries and the county's ability to pay. The commission does not have the authority to determine or designate a council member as full-time or part-time employee.

Please contact me if you have any questions.

GYM:luv

cc: Mike White, Council Chair
Joseph Talon, Salary Commission Chair
David Underwood, Director of DPS

APPROVED FOR TRANSMITTAL:



PATRICK K. WONG
Corporation Counsel

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⁴Although this request for a Corporation Counsel Opinion was limited to the Commission's authority granted by the charter, other county ordinances and rules, including Maui County Code §2.40, et seq. and the Rules of the Salary Commission, §01-101, et seq. were reviewed and found to be silent as to whether the commission may determine whether a council member is a full-time or part-time employee or designate them as one or the other.