


DEPARTMENT OF THE CORPORATION COUNSEL
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April 16, 2003

Memo To: G. Riki Hokama, Chair
Budget and Finance Committee

From: Traci Fujita Villarosa 
Deputy Corporation Counsel

Re: Preliminary Review Questions From The April 2, 2003 Meeting (CC-02)(BF-1)

You have asked this office to provide advice to you on the subject of carryover savings in the Budget Ordinance. These issues arose at the Budget and Finance Committee meeting on April 2, 2003.

- 1. Based upon the Budget Director's statements regarding a deficit in carryover savings for FY 2003, should the Mayor have notified the Council as required by section 9-10 of the Charter?**

Section 9-10(1), Appropriations: Reduction and Transfer, of the Revised Charter of the County of Maui ("Charter") states, in part: "If at any time during the fiscal year it appears probable to the mayor that the revenues available will be insufficient to meet the amount appropriated, the mayor shall report to the council without delay, indicating the estimated amount of the deficit, any remedial action taken by the mayor, and recommendations as to any further action to be taken. The council shall then take such further action as it deems necessary to prevent or minimize any deficit. For that purpose it may pass a bill reducing one or more appropriations; but no appropriation to pay any indebtedness may be reduced, and no appropriation may be reduced by more than the amount of the unencumbered balance thereof or below any amount required by law to be appropriated."

Section 2 of the Budget Ordinance for Fiscal Year 2003 ("FY03 Budget") declares, in part, that the estimated revenues for Carryover/Savings are: General Fund \$10,108,895; Wastewater Fund \$2,337,100; Highway Fund \$1,031,661; Solid Waste Fund \$269,201; Golf Fund \$512,529; Liquor Fund \$548,783; and Bikeway Fund \$1,597. Section 2 of the FY03 Budget also appropriates the estimated Carryover/Savings to the functions, programs, funds, departments and agencies for the purposes set forth in sections 3 and 4 of the FY03 Budget.

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The Proposed Budget Ordinance for Fiscal Year 2004 states that the actual Carryover/Savings for FY03 are: General Fund \$7,752,979; Wastewater Fund \$3,382,675; Highway Fund - \$435,156; Solid Waste Fund \$1,060,333; Golf Fund \$512,529; Liquor Fund \$843,556; and Bikeway Fund -\$3,663.

Wayne Fujita, Deputy Director of Finance, ("Mr. Fujita") explained that when accountants discuss the subject of deficits, it is discussed in one of two contexts: Balance Sheet or Income. The Balance Sheet context pertains to a point in time while the Income context pertains to a period of time. According to Mr. Fujita, the past practices of the Department of Finance ("Finance") has been to utilize the Balance Sheet and not the Income context when determining whether there is or will be a deficit in the revenues. In other words, Finance looks at county revenues as a series of snapshots in time and only finds a deficit if a particular snapshot of county revenue shows a deficit. Finance does not compare a revenue estimate with the actual revenue amount eight months later when determining if a deficit exists.

Mr. Fujita further explained that the reason Finance utilizes the Balance Sheet context is because section 9-10(1) of the Charter begins with the clause, "At any time", and he interprets this language to mean a point in time rather than a period of time. Moreover, Mr. Fujita does not believe the Charter refers to a period of time because every year many revenue categories fall short of the projected revenue estimate, but this has never triggered the reporting requirement in section 9-10(1) of the Charter. The reason for this is that either spending is reduced or other revenue categories offset any shortfall.

Mr. Fujita interprets section 9-10(1) of the Charter to require reporting only when revenues available are insufficient to meet the amount appropriated and, according to Mr. Fujita, this has not occurred. The report submitted to Council by Finance the first week of April 2003 showed that real property tax revenue increased by \$1,400,000 and carryover savings was \$1,146,287. Thus, Mr. Fujita's position is that there was no deficit and the amount of carryover savings revenue has been sufficient to meet the amount appropriated.

The interpretation of the charter is similar to the interpretation of a statute. Maui County Council v. Thompson, 929 P.2d 1355, Hawai'i (1996). The fundamental starting point for statutory interpretation is the language of the statute itself. Peterson v. Hawaii Elec. Light Co., Inc., 944 P.2d 1265 (Sept. 5, 1997). Where the statutory language is plain and unambiguous, the plain and obvious meaning should be given effect. Id. Statutes are open to construction only where the language used in the statute is ambiguous and requires interpretation. Id. Rules of interpretation are resorted to for the purpose of resolving an ambiguity and not for creating one. Id. When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. Id. Legislative intent is the guiding star in the interpretation of a statute. Id. Implicit in the task of statutory construction the foremost obligation is to ascertain and give effect

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to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Id. In construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Id. In construing a statute one must look to the object to be accomplished, the evils and mischiefs to be remedied, and place on the statute a reasonable construction that will best effect its purpose. Territory of Hawaii v. Morita, 41 Haw. 1 (March 12, 1955).

Section 9-10(1) of the Charter is ambiguous in that it does not contain clear language setting forth the specific circumstances which would cause the Mayor to believe that the revenues available would probably "be insufficient to meet the amount appropriated." However, we believe the intent of this section is to provide Council with notice of a material shortfall in the County's estimated revenues and the circumstances surrounding such shortfall.

Pursuant to section 3-6 of the Charter, Council is vested with the authority to legislate taxes, rates, fees, and assessments, borrow money, and legislate appropriations. Pursuant to section 9-5 of the Charter, Council also has duties associated with the review and adoption of the annual budget. Given this fiscal responsibility, it is important that Council be informed in a timely manner of material changes in the County's financial situation. Thus, it is reasonable to infer from the language in section 9-10(1) of the Charter that the purpose of the section is to allow Council to fulfill its duties under the Charter.

Therefore, it is this office's opinion that section 9-10(1) of the Charter should be read broadly to give effect to the intent of this section. Given this broad interpretation, it is the conclusion of this office that, in accordance with section 9-10(1) of the Charter, the Mayor should notify Council of any material shortfall in estimated revenues when it appears probable that that is likely to be the case.¹ The Mayor's report should include: 1) The estimated amount of the difference between the actual and estimated carryover savings revenue as of the date of the report; 2) Remedial measures taken, if any, by the Mayor to address the insufficiency in revenue (e.g., reducing expenditures or using other revenue to offset a shortfall in carryover savings revenue); and 3) Any recommendations regarding further action to be taken. With this information, Council could then make informed decisions on whether further action would be necessary to ensure that the County's financial situation is secure.

¹ The exact timing of a determination that revenues will be insufficient to meet the amount appropriated will depend upon the facts and circumstances. Estimates of revenue are subject to fluctuation and uncertainty, and, in the case of carryover savings, are subject to change pending final audit.

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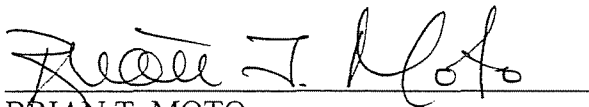
2. If section 9-10 of the Charter is applicable to the situation referred to above, what are all of the Council's possible remedies or courses of action?

Once Council is informed of the probability that revenues available will be insufficient to meet the amount appropriated, section 9-10(1) of the Charter provides, in part: "1) Council shall take such further action as it deems necessary to prevent or minimize any deficit; and 2) Council may pass a bill reducing one or more appropriations; but no appropriation to pay any indebtedness may be reduced, and no appropriation may be reduced by more than the amount of the unencumbered balance thereof or below any amount required by law to be appropriated."

In this situation, if Council is satisfied with the remedial action or actions taken by the Mayor (e.g., reduced spending or identification of higher-than-expected offsetting revenue sources), and accepts the Mayor's recommendation that no further action be taken, then no further action by Council would be necessary.

If you have any further questions, please do not hesitate to contact me.

Approved for Transmittal:



BRIAN T. MOTO

Corporation Counsel

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cc: Danilo Agsalog, Budget Director
Wayne Fujita, Deputy Director of Finance
Keith Regan, Director of Finance