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May 7, 2003

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

From: Traci Fujita Villarosa 
Deputy Corporation Counsel

Subject: Preliminary Review Questions from the April 8, 2003 Meeting
(CC-04) (BF-1)

You have asked this office to provide you with legal advice relating to several Department of Water Supply proposed budget issues which arose at the April 8, 2003 meeting of the Budget and Finance Committee.

1. Provide an analysis of the application of Section 9-14 of the Charter of the County of Maui (Charter) to the Director of Water Supply's explanation that the Working Capital Emergency Fund on page 20-3 of the Budget Details represents carryover savings, including any restrictions that may apply.

"Operating expenses, reserves, and appropriations. All receipts of the board of water supply other than from the sale of bonds shall be deposited daily in a bank by the board and the sums so deposited shall be accounted for and be paid into the county treasury at the end of each month and maintained in a special fund. The Board may make appropriations and allowances from the fund for the following purposes: (1) For the payment of the operating and maintenance expenses of the waterworks; (2) For repairs, replacements, additions, and extensions; (3) For **accident reserve**, pension charges, and compensation insurance; (4) For payment of interest and sinking funds on all bonds issued for the acquisition or construction of the waterworks and extensions thereto and for the reserve fund." § 54-24, Hawaii Revised Statutes ("HRS") (emphases added).

According to Ms. Holly Perdido, Department of Water Supply Fiscal Officer, ("Ms. Perdido"), the past practice of the Board of Water Supply ("Board") has been to appropriate an amount equal to the estimated fiscal year ending balance of the Department's Revenue Fund to a Working Capital Emergency Fund ("Emergency Fund"). The Department's Revenue Fund consists of Department revenue from rates and fees. Ms. Perdido could not recall specific examples of how the Emergency Fund has been used by the Department in the past.

Hawaii case law has established that county charter provisions pertaining to the Department and relating solely to the county's executive and administrative structure and organization supersede all state laws in conflict therewith. Hawaii Government Employees' Association ("HGEA") v. County of Maui, 59 Haw. 65, 576 P.2d 1029 (1978). Although § 50-15, HRS, expressly reserves to the state legislature the power to enact all laws of general application throughout the State on matters of statewide concern and interest, the Court in HGEA v. County of Maui held that the administration of waterworks ceased to be matters of statewide concern and became matters of local concern when the legislature delegated administration of waterworks to the counties. Id. at 79, 576 P.2d at 1038.

Pursuant to the Revised Charter of the County of Maui (1983), as amended, (2003 Edition), ("Charter") the Department was brought under the management and oversight of the Mayor and County Council. The new Charter provisions relating to the Department's structure and organization supersede all state laws in conflict with such Charter provisions. Prior to December 5, 2002 the Department was authorized to establish the Emergency Fund pursuant to § 54-24, HRS; however, as of December 5, 2002 (the effective date of the Charter amendments relating to the Department), Article 9, Financial Procedures, of the Charter, which permits any surplus and reserves to be transferred to an emergency fund, applies to the Department.

Surplus and Reserves. Any unappropriated surplus and any unencumbered balances of any appropriations in any fund at the end of any fiscal year shall be available for appropriation for the succeeding fiscal year or years. All or a portion of the surplus may be transferred to any emergency fund or to a capital improvement reserve fund by ordinance. The funds in an emergency reserve fund may be used to meet any emergency. Funds transferred to a capital improvement reserve fund shall be expended only for the specific improvements designated, provided that the purposes for which such capital improvement reserve fund may be expended may be amended by ordinance passed upon a vote of not less than seven members of the council. No amounts transferred into an emergency reserve fund or a capital improvement reserve fund shall be deducted from amounts to be raised by taxes for ensuing years. § 9-14 of the Charter.

Therefore, the balance remaining in the Department's Revenue Fund from fiscal year 2003 may be appropriated to an Emergency Reserve Fund ("Emergency Reserve Fund") for the fiscal year 2004 Budget Ordinance pursuant to § 9-14 of the Charter. The funds in such Emergency Reserve Fund could then be used by the Department to meet any emergency. Any unencumbered funds remaining in the Emergency Reserve Fund at the end of fiscal year 2004 would lapse.¹ Of course, such funds could again be appropriated to an Emergency Reserve Fund in the fiscal year 2005 Budget Ordinance.

¹Charter § 9-11.

2. Provide an analysis of how the 15 percent capital reserve relates to Section 9-14 of the Charter, including any restrictions that may apply.

The Department established the CIP Replacement Fund pursuant to § 54-21, Hawaii Revised Statutes ("HRS").

Reserve fund. The board of water supply may provide for the accumulation of a fund for the purpose of financing major replacements, or extensions and additions, the average estimated annual increment to which, for a period of ten years, shall not exceed fifteen per cent of the gross revenue of the board in any fiscal year. § 54-21, HRS.

As stated above, chapter 54, HRS, no longer applies to the Department to the extent that it conflicts with the Charter's provisions relating to Department structure and organization. As of December 5, 2002 the provisions of Article 9, Financial Procedures, of the Charter now apply to the Department. § 9-14 of the Charter permits the appropriation of all or a portion of any unappropriated surplus and any unencumbered balances to any capital improvement reserve fund ("CI Reserve Fund") by ordinance. However, specific improvement projects must be identified and expenditures from the CI Reserve Fund are limited to such designated improvements.

Therefore, any unappropriated surplus and any unencumbered balances remaining in any Department funds at the end of fiscal year 2003 are available for appropriation to a CI Reserve Fund for fiscal year 2004. However, the Department must designate specific improvement projects to be funded by the CI Reserve Fund. Because the Department has historically set aside these funds for major infrastructure projects, the Department should be able to identify improvements.

3. Provide an analysis of possible liability issues related to vehicle inspections being performed in-house by County mechanics.

§286-27, HRS, sets forth the requirements to obtain a permit to operate a vehicle safety inspection station:

"Permits to operate official inspection stations. (a) The department of transportation, referred to in this section and sections 286-28 and 286-29 as "the department", shall be responsible for issuing permits for and furnishing instructions and all forms to official inspection stations. The stations shall operate in the manner directed by the department pursuant to standards established by the director of transportation. (b) Application for an official inspection permit shall be made upon an official form and shall be granted only when the department is satisfied that the station is equipped

properly and has competent personnel to make the required inspections. Before issuing a permit, the department shall require the applicant to file proof that the applicant has, in effect, a liability insurance policy, issued to the applicant by an insurance company authorized to do business in the State, insuring against the liability of the applicant and any of the applicant's employees in minimum amounts as follows: comprehensive public liability insurance in the amount of \$10,000 for one person and \$20,000 for one accident and comprehensive property damage insurance of \$5,000; provided that the director of transportation by rules may establish higher limits; provided that the proof of insurance need not be filed by an applicant who shall inspect only vehicles owned by the applicant; and provided further that the proof of insurance need not be filed by instrumentalities of the United States.

(c) Official inspection stations in this State shall be exempt from liability arising from the destruction of property or injury to persons caused by special interest vehicles; provided that the official inspection station:

(1) Meets the requirements of subsection (b); and

(2) Exercises due diligence in inspecting special interest vehicles in accordance with applicable standards for motor vehicle and equipment safety for special interest vehicles.

(d) A permit for an official station shall not be assigned or transferred or used at any location other than that designated by the department and every permit shall be posted in a conspicuous place at the location designated.

(e) The counties shall provide for the necessary administrative and enforcement services.

(f) The counties shall be reimbursed the costs incurred in providing the services under subsection (e).”

Mr. Clifford Koki, State of Hawaii Motor Vehicle Safety Office, has informed this office that currently the Department of Public Works and Environmental Management Highways Division is permitted in accordance with §286-27, HRS, to conduct vehicle safety inspections for vehicles with a gross weight over 10,000 pounds and for vehicles owned by the County. Therefore, assuming adequate personnel is available, it would be possible for the County to once again conduct its own vehicle inspections.

The County currently holds a private permit to operate an official inspection station. Hawaii Administrative Rules § 19-133.2-6 states that “private permits allow permittees to conduct inspections only on those types of vehicles listed on the face of the permit which are owned by and registered to the owner and operator of the official inspection station. A private station qualification shall be determined by DOT.” Thus, if the County decided to conduct its own vehicle inspections, the County would not be taking on the additional responsibility and liability of conducting vehicle inspections on vehicles other than those owned by the County.

As a permit holder, and to the extent, if at all, that County actually conducts its own vehicle inspections, County accepts the responsibility of conducting inspections in accordance with State regulations. The County's permit may be suspended or revoked by the State pursuant to §286-28, HRS, if the State finds that the County is not conducting inspections properly.

“Vehicles without required equipment or in unsafe condition. No person shall drive or cause to move on any highway any motor vehicle, trailer, semitrailer, or pole trailer, or any combinations thereof, unless the equipment thereon is in good working order and adjustment as required in this part so as not to endanger the driver or other occupant or any person upon the highway.” § 286-21, HRS.

It is clear from § 286-21, HRS, that the purpose for the requirement of regular vehicle inspections is to ensure that vehicles operating on highways are in a safe condition. Vehicle inspections protect both the vehicle operator as well as the public. The safety inspections provide the vehicle owner of timely notice of any problems or potential problems with the vehicle so that repairs or adjustments can be made before injury to persons or damage to property occurs.

Therefore, so long as County employees operate the official inspection station in accordance with the terms of the permit and conduct vehicle safety inspections properly, the risks associated with conducting such inspections in-house should be manageable.

4. Provide an explanation for the Department of Water Supply's practice to allow Capital Improvement Projects to lapse after 12 months, which appears to be in conflict with Section 9-11 of the Charter.

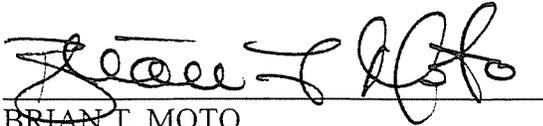
Ms. Perdido informed this office that capital improvement projects (“CIP”) were converted to a 12-month appropriation period by approval of the Board of Water Supply (“Board”). The reason for this change was to provide the Department with an easier means of tracking appropriations.. A 12-month CIP appropriation period means that appropriations would run concurrently with the operating budget.

As stated above, Article 9, Financial Procedures, of the Charter did not apply to the Department prior to December 5, 2002; rather, former Charter §8-11.4(4) authorized the Board to adopt an annual operating and capital budget. Accordingly, the Board had authority to limit the time in which CIP appropriations could be encumbered to a twelve-month period. However, since the Charter amendments took effect on December 5, 2002, the Board no longer has this authority and § 9-11 of the Charter now applies to the Department. Therefore, for the fiscal year 2004 Budget the Department's unencumbered CIP appropriations will lapse six months after the close of the fiscal year.

G. Riki Hokama, Chair
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If you have any further questions please do not hesitate to contact me.

Approved for Transmittal:

A handwritten signature in black ink, appearing to read "Brian T. Moto", written over a horizontal line.

BRIAN T. MOTO
Corporation Counsel

cc: Edward Kushi, Jr., Deputy Corporation Counsel
George Tengan, Director of the Department of Water Supply
Danilo Agasalog, Budget Director
Alan M. Arakawa, Mayor