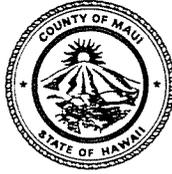


ALAN M. ARAKAWA  
Mayor



BRIAN T. MOTO  
Corporation Counsel

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May 20, 2003

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

From: Traci Fujita Villarosa, Deputy Corporation Counsel 

Subject: **Fiscal Year 2004 Budget (Council's Ability to Revise Mayor's Request For Interdepartmental or Intradepartmental Transfers) (BF-1)**

You have asked this office to provide you with legal advice regarding Council's ability to revise a Mayor's request for interdepartmental or intradepartmental transfers. You have called our attention to section 9-10(2) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), which provides:

Upon written request of the mayor part or all of any unencumbered appropriation balance may be transferred within a department by resolution or from one department to another by ordinance. No transfer, however, shall be made from an appropriation to pay any indebtedness, and no appropriation may be reduced below any amount required by law to be appropriated.

May Council amend the Mayor's written request for an interdepartmental or intradepartmental transfer made pursuant to this provision or, alternatively, must the Council vote only to either approve or reject the Mayor's request?

No. Council may not amend the Mayor's written request for an interdepartmental or intradepartmental transfer made pursuant to section 9-10(2) of the Charter. Council is limited to voting to either approve or reject the Mayor's written request as submitted.<sup>1</sup>

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<sup>1</sup> Statute or charter provisions relating to appropriation ordinances must be complied with or else the appropriation will be held void. McQuillin Mun. Corp. § 39.66 (3<sup>rd</sup> ed.).

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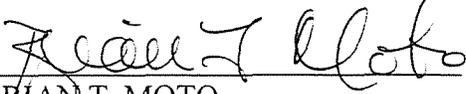
Section 9-10(3) of the Charter states: "The mayor or the council may initiate changes to their respective operating budgets." Pursuant to section 9-10(2) of the Charter, transfers of unencumbered appropriation balances within a department or from one department to another may occur only "[u]pon written request of the mayor." Of particular importance is the clause, "[u]pon written request of the mayor", which, when read in the context of section 9-10(3) of the Charter regarding who may initiate changes to executive branch and legislative branch operating budgets, implies that Council action upon a written request of the Mayor is limited to approval or disapproval of the request as submitted. If Council were to amend the Mayor's request for an interdepartmental or intradepartmental transfer of an unencumbered appropriation balance by, for example, changing the source or proposed use of the unencumbered balance or changing the amount of the balance to be transferred, Council would no longer be acting on the Mayor's request. Instead, Council would, for all practical purposes, be initiating a change to the mayor's operating budget, an action clearly prohibited by section 9-10(3) of the Charter.<sup>2</sup>

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

TFV:ma

cc: Mayor Alan M. Arakawa  
Keith A. Regan, Director of Finance  
Danilo F. Agsalog, Budget Director  
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APPROVED FOR TRANSMITTAL:

  
BRIAN T. MOTO  
Corporation Counsel

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<sup>2</sup> Compare the language in section 9-9(1) of the Charter: "If during any fiscal year the mayor certifies that there are available for appropriation (a) revenues received from sources not anticipated in the budget for that year, or (b) revenues received from anticipated sources but in excess of the budget estimates therefor, or (c) estimated revenues to be reimbursed by federal or state agencies to the county, the **county** may by ordinance make supplemental appropriations for that year up to the amount of the additional revenues so certified." (Emphasis added.) In contrast to section 9-10(2) of the Charter, section 9-9(1) of the Charter makes no reference to a written request of the Mayor, but simply states that the county may make supplemental appropriations by ordinance. Therefore, whereas Council is not necessarily limited to any proposed budget amendments accompanying a mayoral certification of additional revenue, Council is limited when the Mayor, pursuant to section 9-10(2) of the Charter, submits a written request for the transfer of unencumbered appropriation balances.