

**MICHAEL P. VICTORINO**  
Mayor

**MOANA M. LUTEY**  
Corporation Counsel

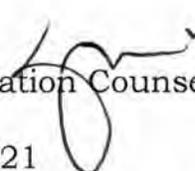
**RICHELLE M. THOMSON**  
First Deputy

**LYDIA A. TODA**  
Risk Management Officer



DEPARTMENT OF THE CORPORATION COUNSEL  
COUNTY OF MAUI  
200 SOUTH HIGH STREET, 3<sup>RD</sup> FLOOR  
WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

MEMO TO: Michael J. Molina  
Chair, Governmental Relations, Ethics and Transparency  
Committee

FROM: Gary Y. Murai   
Deputy Corporation Counsel

DATE: October 27, 2021

SUBJECT: **NOMINATIONS TO BOARDS, COMMITTEES AND  
COMMISSIONS (GREAT-2)**

We respond to your memorandum dated October 5, 2021, requesting an opinion on the questions presented below.

I. QUESTIONS PRESENTED

Charter Section 13-2(2) states: "Not more than a bare majority of the members of any board or commission shall belong to the same political party." As discussed at the Committee meeting of September 28, 2021, please provide a legal opinion on this provision's applicability to boards and commissions created by ordinance.<sup>1</sup> Please also provide the applicability of Charter Section 13-2 to all county boards and commissions, including those newly established by Council.

II. BRIEF ANSWER

1. The boards and commissions established by the County Council via ordinance are not subject to the requirement of Charter Section 13-2(2), unless

<sup>1</sup> At the GREAT Committee meeting of September 28, 2021, at approximately 11:22 a.m., Committee Vice Chair Rawlins Fernandez noted that the Board and Commission Application form (Form No. B&C app 6/25/20:pn) requires the applicant to disclose their political affiliation and that Article 13-2(2) of the County Charter requires that no more than a bare majority of the members of a board or commission may belong to the same political party. Vice Chair Rawlins Fernandez queried what the Council would do if it all the applicants for a board or commission came from the same party.

the ordinance incorporates Section 13-2(2) or makes the board or commission subject to the requirement that no more than a bare majority of board or commission members may belong to the same political party.

2. Charter Section 13-2 does not apply to boards and commissions created by the Council. However, those boards and commissions incorporate all or parts of Section 13-2, or provide guidance similar to that found in Section 13-2.

### III. ANALYSIS

Section 13-1(1) of the Charter of the County of Maui (“Charter”) defines board or commission as a “board or commission established by this charter” (emphasis added). Interpretation of the language of a county charter is similar to the interpretation of a statute, and that interpretation is based upon the intention of the county, which is ascertained primarily by the language of the charter itself.<sup>2</sup>

Given the clear and unambiguous of definition given to board or commission in Section 13-1(1),<sup>3</sup> we conclude that the boards and commissions established by charter and subject to Section 13-2(2) are, for example, the Fire and Public Safety Commission,<sup>4</sup> the various Planning Commissions,<sup>5</sup> Civil Service Commission,<sup>6</sup> and any of the fourteen or so boards and commissions authorized by the Charter.

However, many boards and commissions created by ordinance specifically incorporate all or parts of Section 13-2, such as the Affirmative Action Advisory Council,<sup>7</sup> the Commission on Persons with Disabilities,<sup>8</sup> and the advisory committees to the Maui Planning Commission,<sup>9</sup> among others. Other boards and commissions created by ordinance such as the Commission on Healing Solutions for the Homeless do not incorporate Section 13-2, but provide its own

---

<sup>2</sup> Maui County Council v. Thompson, 84 Hawaii 105, 106 (Hawaii 1996); Citizens for Equitable and Responsible Government v. County of Hawaii, 108 Hawaii 318, 323 (Hawaii 1975)

<sup>3</sup> In statutory construction, words are to be given their usual meaning. H.R.S. § 1-11, (“The words of a law are generally to be understood in their most known and usual signification, without attending so much to the literal and strictly grammatical construction of the words as to their general or popular use or meaning.”)

<sup>4</sup> Charter Section 8-7.2

<sup>5</sup> Charter Section 8-8.4

<sup>6</sup> Charter Section 8-7.2

<sup>7</sup> Chapter 2.09.020, M.C.C. (“Section 13-2 of the revised charter of the County of Maui shall apply to the affirmative action advisory council in the same manner as said provisions apply to boards and commissions recognized by the revised charter...”)

<sup>8</sup> Chapter 2.32.030, M.C.C.

<sup>9</sup> Chapter 2.28.050(H), M.C.C (Adopted subsections 2-4 and 6 to 15 of Charter Section 13-2(2))

Michael J. Molina, Chair  
October 27, 2021  
Page 3

operational guidance, similar to Section 13-2.<sup>10</sup> There is also a category of boards and commissions that are created pursuant to state or federal law that also have their own membership requirements separate from Chapter 13-2(2), such as the Commission on the Status of Women<sup>11</sup> and the Maui Metropolitan Planning Organization.<sup>12</sup>

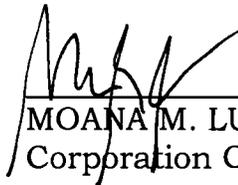
#### IV. CONCLUSION

The boards and commissions created by legislative action of the Council are not subject to the requirement of Section 13-2(2) that no more than a bare majority of the members belong to the same political party, unless the ordinance authorizing the board or commission incorporates Section 13-2(2).

Furthermore, boards or commissions created by legislative action of the Council, state law or federal law are not subject to Section 13-2 or any of its subparts, unless the applicable ordinance or law requires it.<sup>13</sup>

Please contact us if you have any questions.<sup>14</sup>

APPROVED FOR TRANSMITTAL:

  
\_\_\_\_\_  
MOANA M. LUTEY,  
Corporation Counsel

LF 2021-0013, GREAT-2 2021-10-27 Advisory re Charter Sec 13-2(2) re same political party

---

<sup>10</sup> Chapter 2.31, M.C.C.

<sup>11</sup> H.R.S. §367-4

<sup>12</sup> Chapter 2.35.020, M.C.C.

<sup>13</sup> This opinion is not a comprehensive survey of all boards and commissions and review of the applicable charter section or ordinance of a particular board or commission is recommended.

<sup>14</sup> Although your memorandum did not specifically ask about the phrase “belong to the same political party” in Section 13-2(2), we note anecdotally that this question may have confused some board or commission applicants. In Council meetings, we have observed board or commission nominees say that they are a Republican because they hold beliefs associated with the Republican Party or they are a Democrat because they selected a Democratic Party ballot or voted for Democrats. We believe these interpretations are incorrect. Belonging to political party is more than voting or having shared beliefs. This question was addressed in *Coray v. Koga*, 56 Hawaii 519 (Hawaii 1975), where the Hawaii Supreme Court held that belonging to a political party means being a member of that party, where the political party acknowledges the person as being a member. *Id.*, 520 We also note that MCC Chapter 2.41.020(A)(6) requires the Mayor to disclose the party affiliation of the nominee, and the Board and Commission Application Form, B&C app 6/25/20:pn also asks for political affiliation. While the definition of affiliation includes membership, the use of different terms may cause confusion, and consideration should be given to clarifying this question to ask for membership in a political party, if any.