

MINUTES OF THE
MAUI COUNTY CHARTER COMMISSION

DATE: January 30, 1964
PLACE: Board Chambers, Wailuku, Maui
CALL TO ORDER: 1:40 P.M.
PRESIDING: Masaru Yokouchi, Chairman
MEMBERS PRESENT: Masaru Yokouchi, Chairman
Emil Balthazar
C. H. Burnett, Jr.
Richard Caldito
William F. Crockett, Vice-Chairman
Cornwell Friel
Nadao Honda
Harry Kobayashi
Keith Tester
MEMBERS EXCUSED: Shiro Hokama
Thomas Yagi
OTHERS PRESENT: Kase Higa, Deputy County Attorney
Mrs. Jay Van Zwalenburg
Mrs. Ann Gillin
Mr. Nathan Ambrose
Mrs. W. Haling

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ROLL CALL:

There were 9 members present and 2 excused at the regular meeting of the Maui County Charter Commission on January 30, 1964.

DISCUSSION ON PROPOSED CHARTER:

Section 8-1.5. Special Counsel

Mr. Higa: It was suggested on paragraph 2 that whenever impeachment proceedings are initiated against the mayor or councilman he must bear his own expenses.

Paragraph 3 authorizes the council, by two-thirds vote, to employ special counsel. I think this is a good provision. Once in a while there is occasion to hire special counsel.

Section 8-1.6. Service of Legal Process

Mr. Higa: At present all legal papers are served on the county chairman and, as a matter of course, he turns them over to the office of the county attorney. This section is copied directly from the City and County of Honolulu Charter.

Chapter 2. Office of the Prosecuting Attorney

Mr. Higa: Inasmuch as your decision was to have only one county attorney's office, this section will be deleted. However, we will have a simple provision stating that at the discretion of the mayor, he may recommend to the council and by a majority vote of the council, an elected prosecuting attorney's office may be created.

Section 8-3.3. Powers, Duties and Functions (Director of Finance)

Mr. Higa: If you don't go for centralized purchasing, paragraph 5 should be deleted. If you look at page 42, the mayor may establish procedures for the purchase of equipment, supplies and materials.

Mr. Balthazar: Having the responsibility for purchases and handling of accounts should not necessarily mean centralized purchasing.

Mr. Higa: To make it clear we will cut out "purchase materials, supplies and equipment". What this paragraph means is that the finance director will be signing public works contracts.

Section 8-4.2. Chief Engineer

Mr. Burnett: What does the term registered engineer mean?

Mr. Higa: Registered under the State.

Mr. Balthazar: One who has residency in the state in which he practices.

Mr. Kobayashi: It should be either registered civil or structural engineer.

Mr. Balthazar: We should include "in the State of Hawaii".

The second sentence in this section was changed to read "He shall be a registered civil or structural professional engineer in the State of Hawaii and shall have had a minimum of five years of training and experience in an engineering position, at least three years of which shall have been in a responsible administrative capacity".

Mr. Balthazar: Moved that the functions of the Board of Water Supply be transferred to the Department of Public Works.

Since it was noted that there were only 8 members present at this time, this matter was deferred.

Chapter 5. Fire Department

Mr. Balthazar: Assuming that the Fire Chief dies or retires, will his assistant be considered to have three years of training and experience in an administrative capacity? Otherwise you must get someone from the outside. We should insert a

provision "except that the deputy fire chief may be promoted to his position". The deputy fire chief may be in this position only for a year or two when the fire chief either dies or retires. Then the deputy fire chief will not have the required three years and he cannot be promoted.

Mr. Caldito: You cannot promote anyone to be the second in command if he never had enough experience. So I think there will be no problem to that.

Chapter 6. Planning Department

Mr. Balthazar: We should include economic development with the planning department.

Mr. Tester: I don't think we need two directors.

Mr. Balthazar: They have no excuse to create separate agencies.

Mr. Higa: In the transitional provisions we have the transfer of economic coordinator to the planning department.

Mr. Balthazar: I move that this department be called the Department of Planning and Economic Development. Seconded by Mr. Tester and carried unanimously.

Mr. Caldito: I would like to hear the arguments of those who are opposed to the Planning Commission.

Mr. Balthazar: I am not opposed to it as an advisory commission but I am opposed to the commission having the power of enforcing law. I feel it should be strictly the council's prerogative. As an executive agency I am opposed to it.

Mr. Caldito: Before laws are enforced, they must come before the council.

Mr. Higa: Under the present setup everything is controlled by ordinance which is passed by the Board of Supervisors. The Board of Supervisors here in Maui County administers the subdivision laws.

Mr. Balthazar: Planning of subdivisions, building permits, etc. should all be under one department.

Mr. Caldito: Before it becomes a law, they don't have to go to the council; however, if there is enough people opposed to that, the council will take action.

Mr. Higa: If you will note on pages 26 and 27, the powers, duties and functions of the Planning Director and the Planning Commission are as authorized by law or by ordinance. This is just as what it is now. Everything is reviewed by the Board of Supervisors. The Planning Commission has been overturned by the Board many times.

- Mr. Caldito: All the legwork is done by the commission. If there is a commission composed of such members as we have now, they can accomplish more than the director himself.
- Mr. Tester: The actual composition of the Planning Commission is very good. They have a group of people who can interpret the local areas very well. The Board usually accepts the recommendation of the Planning Commission.
- Mr. Higa: Practically all of the other charters have a provision for a Planning Commission. I think it is accepted throughout the State. When it comes to planning, you must have broad community support.
- Mr. Balthazar: I would like to read the recommendation of the Planning Commission further.
I think it should be stipulated as to what the powers--not functions--of the Planning Commission shall be. For instance, would they have quasi-judicial powers?
- Mr. Tester: You must consider actually whether you want a commission or not.
- Mr. Higa: Under the present setup everything is decided by the Board of Supervisors. You are thinking of the City and County Planning Commission and the Zoning Board. They have much more powers than our commission.
- Mr. Balthazar: Keep the powers of law in the council. Don't give it out to non-elected people--this has been my concern in this whole charter. As long as they will not have quasi-judicial powers I am satisfied.
- Mr. Yokouchi: The Board does not accept only the Planning Commission's views. Quite a few times the Board has overruled the Planning Commission's decisions.
- Mr. Higa: They do have certain amount of powers, but they are not as independent as the Board of Water Supply. Under the present setup the Planning Commission is not equipped to take care of subdivisions.
- Mr. Burnett: Why not let the supervisors go out and see some of these things themselves? Why put in an extra commission and have a secretary, etc.?
- I move that there shall be no Planning Commission.
Seconded by Mr. Balthazar. Motion was defeated 3 ayes (Balthazar, Burnett and Friel) and 5 noes (Caldito, Honda, Kobayashi, Tester and Yokouchi).

Mr. Burnett: I move that the Planning Director shall be appointed by the mayor. Seconded by Mr. Tester.

Mr. Balthazar: If a mayor appoints the planning director and he takes orders from the mayor, what good is the commission?

I move that the Planning Director shall be appointed by the mayor without confirmation of the council. Seconded and carried unanimously.

Mr. Burnett: I feel if you are going to have any commissions confirmed by the council, have all of them confirmed. Don't just single out one of them and say it does not have to be confirmed. Then you are doing away with the strong mayor.

Mr. Balthazar: We do not have a quorum to decide on the motion as to whether there will be a planning commission.

Mr. Yokouchi: The motion is void for lack of quorum.

Chapter 7. Department of Civil Service

Mr. Burnett: How does the Civil Service Commission tie in with the State law? Isn't there a State law that definitely sets it up?

Mr. Higa: My personal opinion is that civil service laws are general laws applicable to all counties and this is one of the laws that I doubt you can hamper with very much. The Civil Service Commission in Honolulu regulates laws.

Mr. Balthazar: I am against an agency having both legislative and judicial powers. If we were to keep the Civil Service Commission, I would like to see those two powers separated.

Mr. Yokouchi: Bill mentioned last night that instead of the Liquor Commission, Civil Service Commission and Planning Commission having both legislative and judicial powers, there should be an appeals board to review appeals.

Mr. Balthazar: It would have to be a blue-ribbon board. Decisions would be strictly from a point of law. We could appoint magistrates to serve on the board.

The Chair called for a recess at 2:45 P.M. Meeting was reconvened at 2:55 P.M.

Mr. Crockett: One of the things which disturbs me about county government is that the people are losing interest in government in respect to the administration of the laws. If the people could take their gripes and grievances to such a blue-ribbon board, I think that we would have a good background of county government.

Mr. Crockett: Another thing is the quasi-judicial function of an agency. A lot of times the executive head of a particular department has already made a decision and yet he is sitting there with the rest of the commission or board while they are reviewing his decision.

This appeals board could hear all the appeals. When the rule a board or commission enacts is being applied to one particular person, these disputes would go to the appeals board. Right now the commission or board is acting as a judge and the executive director of the agency is sitting with them and also acting as a judge. It is very difficult for the board to act against the director with him sitting there.

Mr. Balthazar: It is contrary to the American system of separation of powers.

Mr. Higa: We have an administrative procedure act.

Mr. Crockett: You may have the administrative procedure act, but as long as you have the administrative agencies performing both functions, there is going to be a problem. One of the reasons why these administrative agencies were formed is because the courts took so long to act.

Mr. Higa: In effect you are saying that this appeals board is like a court.

Mr. Caldito: Do you want to do away with all these commissions by creating an appeals board?

Mr. Crockett: I am saying that if a decision has been made and the particular person is against it, he should be able to do something about it instead of going to court.

Mr. Caldito: They are free to go to the Board of Supervisors if they want to.

Mr. Crockett: I am not so sure that that is the necessary effect of the charter we are going to set up. I am not so sure that when we say that all the executive power is going to be vested with the executive branch of this government, we are definitely telling the council that they cannot interfere. It will not be true.

Mr. Caldito: My idea of the whole thing was to keep whatever that is running smoothly. However, we could make corrections wherever it is not operating as smoothly as it should. I did not vote for a mayor who would reserve everything in the County of Maui. I would like to see that we come out with a charter that will be acceptable to the people.

Mr. Kobayashi: Let us say that the Board of Supervisors makes an ordinary legislative decision. Then there is a group of people trying to appeal on such decision. Do they go to the appeals board?

Mr. Crockett: Certainly not. I am referring to situations where a decision is made as to whether a particular person has violated the rules. I am also talking about this appeals board hearing the appeals from the administrative agencies.

Mr. Balthazar: There should be something like a people's court that will get quick redress, quick results, etc.

Mr. Crockett: I want to suggest that we draw in our charter a provision on due process of law.

Mr. Burnett: Are you just taking away the decision-making power of any commission from those who make the rules?

Mr. Crockett: That is right.

Mr. Tester: Why are you so sure that if you had this type of appeals board, the people will be able to get to them any more so than they would get to the council?

Mr. Balthazar: Because we would write it in so that it would be easy for them to go to the appeals board.

Mr. Crockett: There shouldn't be a conglomeration of legislative and judicial powers in one particular body.

Mr. Kobayashi: Under the strong mayor type of government there are some differences as far as administrative procedures are concerned. The mayor will handle all the departments; he would award contracts, etc. The only thing the council can do is to act as an appeals board.

Mr. Crockett: My idea is that there are other duties that could be handled by the council.

Mr. Kobayashi: Under the strong mayor type of government these commissions work directly with the mayor. The legislative portion will be left to the council.

Mr. Balthazar: We are trying to separate judicial and legislative powers.

Mr. Kobayashi: Rules and regulations should be made by the commissions themselves.

Mr. Caldito: Who will have the power of appointing the members of such an appeals board?

Mr. Yokouchi: I would say the mayor with the confirmation of the council.

Mr. Balthazar: We could say that the mayor shall appoint a certain number and the council shall appoint a certain number.

Mr. Yokouchi: I was referring to a really independent board.

Mr. Crockett: In a small county we have sincere people to serve on this board.

- Mr. Yokouchi: The question is whether these people would know all the technicalities of law.
- Mr. Balthazar: Why not have at least one lawyer assigned to this board?
- Mr. Crockett: I don't think in most of these cases there are so much technicalities as there are facts.
- Mr. Yokouchi: Whether these people would be able to digest enough of the facts of the people is another question. For instance, in order to make a decision on a civil service appeal, these people would have to review the whole thing.
- Mr. Crockett: There shouldn't be any feeling that it should be this way.
- Mrs. Haling: I don't think there is any individual who is capable of being both judge and jury. This is why in a point of law we have a judge and a jury.
- Mr. Tester: How many members would this appeals board be composed of? Would it be completely independent?
- Mr. Crockett: As completely independent as we can make it with about five members.
- Mr. Higa: If it is an appeal from a personnel director's action, would the appeal go to the board you are thinking of?
- Mr. Crockett: The details must be worked out later on.
- Mr. Higa: The idea is good but I think you will run into some practical problems if you have the appeals board act on those areas where we normally have an appeals board. We already have in the civil service laws and rules and regulations procedures for appeal. According to the zoning ordinance any person can appeal to the board within so many days from any action of the Planning Commission.
- After the council makes its decision, would this appeals board still be able to override the council's decision?
- Mr. Balthazar: All appeals would be directed to the appeals board.
- Mr. Higa: Then this appeals board would have to be familiar with civil service laws, zoning laws, etc.
- Mr. Balthazar: An appellant would explain his situation to the board and the board would sit in judgment as to whether the appellant is correct or whether the decision is correct. The board would make the decision after the appeal has been set up.

Mrs. Van Zwahlenburg: Not all of us can come to the Board of Supervisors--perhaps we are afraid. A board of this nature would tend to give an ordinary citizen a little more confidence.

Mr. Tester: It sounds logical, but I think there will be some real technicalities involved.

Mr. Higa: Why don't you propose such an appeals board in the areas where there is no chance to appeal? Bill is concerned about due process of law. We have due process of law in the Civil Service Commission.

No matter what there is going to be some difficulty in the judicial process. This will have to be a full-time board. The members on the board would have to be paid.

Mr. Kobayashi: In a small county like this most of the people would know the members on the board.

I would be 100% in favor if we have an appeals board come from some place else outside of the State of Hawaii.

Mr. Tester: The caliber of the men on the U.S. Appeals Board is such that people know they will get a square deal.

Mr. Balthazar: I think such a board as this will be justice for the people in a sense that they never had such a board before.

Chapter 8. Board of Water Supply

Mr. Burnett: I move that we have a separate Board of Water Supply and that the details would be worked out later. Seconded by Mr. Caldito and carried-- (7 ayes and 2 noes--Balthazar and Friel).

Mr. Higa: We have not spelled out the powers, duties and functions of the Board of Water Supply as in the City and County Charter. We have a chapter in the Revised Laws of Hawaii creating the Board of Water Supply and that would in effect stand in this chapter, except as you may change it here in this charter.

Mr. Balthazar: I move that the mayor shall appoint and may remove the Manager and Chief Engineer. Seconded by Mr. Friel.

Mr. Caldito: I wonder whether we realize that we are going to have a Board of Water Supply and yet we are going to have the mayor appoint and remove the Manager and Chief Engineer. We are actually creating two departments. The Board will set a policy, but if the Manager and Chief Engineer does not want to abide with this, he could go to see the mayor. The Board of Water Supply today is working very efficiently and if anyone can prove to me that this is not so, I may change my mind.

Mr. Tester: Why should it be any different than the Department of Public Works? Why should the Manager of the Board of Water Supply be any different than the Chief Engineer of the Department of Public Works?

Mr. Caldito: The Board of Water Supply has revenues derived from taxation.

In what way are the legislators subsidizing the Water Board? To me the "A" Account is the main thing, plus equipment. The County of Maui does not provide any money for any "A" Account. If you mean improvement, even the public works department is being supported by the State. The County is not giving them anything now. In fact, they are paying back what they have borrowed before.

Mr. Balthazar: They have more personnel, separate vehicles, etc.

Mr. Caldito: There are 51 representatives and 25 senators and about 29 councilmen in the State of Hawaii. The majority are in favor of the Water Board.

Mr. Balthazar: (Withdrew his motion--that the mayor shall appoint and may remove the manager and chief engineer).

I think a decision should be made first whether the Board of Water Supply will be an independent board or not.

ADJOURNMENT:

The meeting was adjourned at 4:15 P.M.

Respectfully submitted,

Harriette E. Miyamoto

HARRIETTE E. MIYAMOTO
Secretary