

ORIGINAL

REPORT OF THE MAUI COUNTY CHARTER COMMISSION

Honorable Soon Oak Lee
Acting Chairman and Executive Officer
and Members of the Board of Supervisors
County of Maui
Wailuku, Maui, Hawaii

Gentlemen:

On June 21, 1963 Chairman Eddie Tam, with the approval of the Board of Supervisors, appointed the Maui County Charter Commission in accordance with the provisions of Act 73, S.L.H. 1963. The persons appointed to serve on the Maui County Charter Commission are: Masaru Yokouchi, Chairman; Emil Balthazar; C. H. Burnett, Jr.; Richard Caldito; William F. Crockett; Cornwell Friel; Shiro Hokama; Nadao Honda; Harry Kobayashi; Keith Tester; and Thomas Yagi.

The Charter Commission elected Mr. William F. Crockett as its Vice-Chairman. The hired staff of the Charter Commission consisted of Mrs. Harriette E. Miyamoto, Senior Clerk-Stenographer; and Mr. Charles C. Young, Part-time Research Assistant.

In the Preliminary Report to the Board of Supervisors made on December 5, 1963, the commission reported that it had decided unanimously to undertake the task of drafting a charter for the County of Maui. That Preliminary Report also showed that the Charter Commission had decided unanimously to adopt the strong mayor-council form of government.

A total of thirty meetings of the Charter Commission and nine public hearings were held during the course of the commission's work. In addition, members of the Charter Commission have appeared before various civic groups to acquaint them with the problems relative to the formation of a charter for the County of Maui.

Section 8 of Act 73 reads as follows:

"Submission of proposed charter to legislative body of the county. Within one year of its appointment, the commission shall submit a report in writing on its activities, findings and recommendations to the legislative body of the county together with a draft of the proposed charter. The legislative body of the county may in turn propose one or more sections as alternative or alternatives to any part of the proposed charter and shall return the charter with the alternatives to the commission for its study within 30 days after it has received the proposed charter from the commission."

In accordance with the above-cited Section 8 of Act 73, we submit herewith a report of the activities, findings and recommendations of the Maui County Charter Commission, together with a draft of the proposed charter.

The following report is meant to be read in conjunction with the proposed charter. This report may answer some of the questions that may be raised by a reader of the proposed charter.

FORM OF GOVERNMENT

As mentioned above, the commission had decided in the early part of its deliberations to adopt a strong mayor-council form of government for the County of Maui. The commission arrived at this decision after studying the various forms of municipal government existing throughout the United States. In general, there are four types of municipal government prevalent in the United States--the commission form, the council-city manager form, the weak mayor-council form, and the strong mayor-council form. All of the various forms of municipal government have their advantages and disadvantages.

The Maui County Charter Commission decided to adopt the strong mayor-council form of government for the County of Maui for the following reasons: (1) it separates legislative from administrative functions; (2) it centralizes administrative responsibility; (3) it preserves the traditional two-party political system in Hawaii and provides for effective political leadership; and (4) it provides for a short ballot.

Under the strong mayor-council form of government, only the mayor and council members will be elected. The present elective offices of county attorney, county treasurer, county auditor and county clerk will be abolished. The functions of the county auditor and county treasurer will be combined into a department of finance. The members of most of the boards and commissions will be appointed by the mayor without the necessity of confirmation by the council. The only boards and commissions whose members must be confirmed by the council are the liquor commission, urban redevelopment and urban renewal agencies and the board of appeals. It was thought that these three agencies had unique features and that confirmation should be required.

All department heads directly under the mayor, such as the county attorney, director of public works, etc., are to be appointed by the mayor without the necessity of confirmation by the council. Under the concept of the strong mayor-council form of government, it is felt that requiring council confirmation of appointments by the mayor only tends to weaken the direct authority and responsibility of the mayor.

ARTICLE I

INCORPORATION, LIMITS AND FORM OF GOVERNMENT

Article I of the proposed charter defines the territorial limits of the County of Maui and includes what comprises the County of Maui at present.

ARTICLE II

POWERS OF THE COUNTY

Under Article II the County of Maui possesses all the powers that it presently has and all other powers that the state legislature may hereinafter assign to the county.

ARTICLE III

COUNTY COUNCIL

Article III pertains to the county council. The county council is the legislative branch of the county under the proposed charter. The council shall consist of nine members, all to be elected at large. Of the nine members, at least one shall have been a resident elector of the Island of Molokai for at least one year immediately prior to his election, and at least one shall have been a resident elector of the Island of Lanai for at least one year immediately prior to his election. In other words, the council will be elected in much the same manner as the present board of supervisors, including the chairman, is elected.

In arriving at the decision to have all council members run at large, the commission was not unmindful of the arguments in favor of district representation. In fact, a minority of the commission is of the opinion that there should be district representation. At the public hearings held by the commission many advocated district representation. No one, however, proposed a specific district representation plan and one which would be fair to all.

One argument against district representation is that it might lead to "log rolling" and actually be detrimental to smaller districts.

Another basic argument against district representation is that it will be extremely difficult to devise a district representation system which will be fair to all. In the recent United States Supreme Court case of Baker v. Carr, 369 U.S. 186, the court declared that a state apportionment act which disfavors voters in one county may be a violation of the equal protection clause of the United States Constitution. If this concept be extended to the County of Maui, should the people in the Hana district with approximately 500 registered voters be given one representative on the council, the people in the

Wailuku district with approximately 9,000 registered voters will be entitled to 18 representatives; the people in the Makawao district with approximately 4,000 registered voters will be entitled to 8 representatives; the people in the Lahaina district with approximately 2,000 registered voters will be entitled to 4 representatives; the people of Molokai with approximately 2,000 registered voters will be entitled to 4 representatives; and the people of Lanai with approximately 700 registered voters will be entitled to 1 representative on the council. Thus, to be fair to all districts it is conceivable that the county will end up with a council consisting of 36 members!

After much discussion the commission decided that the terms of office of councilmen should be for four years, similar to the terms of councilmen in the City and County of Honolulu. This was not a unanimous decision since there are arguments for a two-year term.

To be eligible for election or appointment to the council, a person must be a citizen of the United States and must have been a duly qualified elector of the county for at least one year immediately preceding his election or appointment. This is the present requirement for election or appointment to the board of supervisors. Of course, to be eligible for any office or employment within the State of Hawaii or within its political subdivisions, a person must have been a resident of the state for at least three years immediately preceding his election or appointment. (Sec. 5-1, Revised Laws of Hawaii 1955.)

The salaries of councilmen are similar to the salaries presently being paid to members of the board of supervisors. The chairman of the council, however, shall receive an additional sum of \$600 per annum.

The procedures and powers of the county council have been stated in general terms for flexibility. Under its

powers to establish county agencies, the council may appoint such committee clerks and other assistants as may be necessary, exempt from civil service.

Among its duties, the council is charged with the duty of causing an independent audit of all county funds and accounts to be made by a certified public accountant or a firm of certified public accountants. Unlike the charter of the City and County of Honolulu, the proposed Maui County charter does not provide for continuous verification of receipts and expenditures of all agencies of the county by the council. The function of continuous verification of receipts and expenditures belongs in the department of finance.

ARTICLE IV

ORDINANCES AND RESOLUTIONS

The provisions on ordinances and resolutions are technical in nature and generally follow the procedure presently used in adopting ordinances and resolutions. The changes proposed from the present system are:

1. Upon the request of three members of the council, a public hearing shall be held on any proposed ordinance or resolution.

2. That only digests of the bills (proposed ordinances) need be published once in a newspaper of general circulation in the county before final reading. At present bills (proposed ordinances) are published once in their entirety.

3. The mayor can veto any bill within ten days after receiving it.

4. The council shall cause a code to be prepared and published, containing all the ordinances of the county.

ARTICLE V

OFFICE OF THE COUNTY CLERK

Under the proposed charter, the county clerk shall be appointed by the chairman of the council. The county clerk is to be treated as a department head.

The appointed county clerk shall have powers and duties quite similar to the powers and duties of the present elected county clerk.

ARTICLE VI

EXECUTIVE BRANCH

Article VI sets forth the manner in which the executive branch shall be organized. This article provides that an administrative code providing for a complete plan of administrative organization of the agencies of the county government shall be adopted by ordinance.

The council, by a vote of six or more of its members, and upon the recommendation of the mayor, may create additional departments. It should be noted, however, that certain agencies, such as the office of the elected prosecutor and the urban redevelopment and urban renewal agencies may be created by simple majority vote of the council.

The mayor may appoint advisory committees but the council shall not have power to appoint advisory committees.

As to the powers and duties of heads of agencies, rules and regulations affecting the public issued by agencies must conform to the provisions of the Administrative Procedure Act, Act 103, S.L.H. 1961, provided that prior to filing such rules and regulations with the county clerk, they must first be approved by the council and the mayor.

The phrase "independent agencies" as used in subparagraph 5 of Section 6-6 and elsewhere in the charter refers to such boards and commissions as the board of water supply, police commission, liquor commission, board of trustees

of the Maui community hospitals, managing committee of Kula sanatorium and general hospital, urban redevelopment and urban renewal agencies; board of appeals and any other independent board or commission which may be created pursuant to the charter. These boards and commissions may not be financially independent, but they are intended to manage their departments without interference from the mayor. The mayor can voice his opinion in the proceedings of these independent agencies, but he shall have no vote.

ARTICLE VII

MAYOR

Article VII sets forth the qualifications and powers, duties and functions of the mayor.

A majority of the commission was of the opinion that there was no necessity for a managing director such as there is in the City and County of Honolulu.

There is no specific provision in the charter for the appointment of an administrative assistant to the mayor, but this will not preclude the mayor from making such an appointment. The powers that are given to such an administrative assistant is largely a matter of discretion with the mayor.

Among other powers, the mayor has the power to appoint the necessary staff for which appropriations have been made by the council. Unless an appropriation has been made for a position, the mayor cannot create the position. It is thought that in this way the council will have effective control over the expenditure of monies for new positions.

The mayor also has the duty of recommending to the council a pay plan for all department heads and other employees exempt from civil service. The salaries of officers and employees of independent boards and commissions exempt from civil service, such as the salary of the manager of the board of water supply, is to be established by the independent board or

commission. Before such salary becomes effective, however, it must be approved by the council and the mayor.

ARTICLE VIII COUNTY AGENCIES

Article VIII sets forth the major agencies, departments, boards and commissions of the county. The major departments of the county are the office of the county attorney, department of finance, department of public works, fire department, planning department, department of civil service, board of water supply, police department, liquor commission, hospital department, urban redevelopment and urban renewal agencies, civil defense agency and the board of appeals.

The fact that other boards and commissions are not mentioned in Article VIII does not necessarily mean that such boards or commissions are abolished. Under Section 15-5, Status of Agencies and Transfer of Functions, all boards, commissions and agencies, the status of which are not specifically changed or abolished by this charter, are continued. Thus, such boards as the Maui historic commission, board of electrical examiners, board of plumbing examiners, etc., will continue to exist and perform the functions they now have.

The department of finance will be one of the most important departments within the county. The department of finance shall assume the duties and functions presently exercised by the office of the county auditor and the office of the county treasurer. The department of finance will also contract for the services of independent contractors, including contractors for public works, county physicians and morticians.

The department of public works shall consist of the existing department of public works and of the department of parks, playgrounds and recreation. It was felt that greater efficiency may be achieved where the personnel and equipment of both of these departments are used interchangeably for the functions of these departments.

A major change from the present system is that the director of public works need not be a registered engineer. It was the opinion of the majority of the commission that a good administrator is more important in this position than an engineer. Of course, there must be an engineering division within the department of public works under the direction of a registered engineer.

Likewise, the manager of the board of water supply need not be a registered engineer. As in the case of the director of public works, a majority of the commission was of the opinion that a good administrator is more essential in this position than an engineer.

The police department will remain substantially as it is at present, except that disciplinary action against any officer or employee in the police department shall be taken under procedures set forth by civil service laws and regulations. A majority of the charter commission felt that the police commission should not be both prosecutor and judge.

The liquor commission shall remain as presently constituted.

The board of trustees of the Maui community hospitals and the managing committee of Kula sanatorium and general hospital shall have the functions they now have.

The board of appeals is a new creation. Its main function is to hear and decide any controversy arising under any ordinance or any regulation of the county or under any law of the state, relative to the administration of the county and any member of the public. The board of appeals, however, shall not hear or decide any controversy for which a judicial or quasi-judicial remedy by another agency of the county has been provided by ordinance or statute.

The personnel director, the manager of the board of water supply, and the chief of police are declared to be the administrative heads of their departments, respectively.

Under the present system the chairman of the civil service commission and the chairman of the board of water supply assume some administrative functions, such as signing vouchers. Such administrative functions, under the proposed charter, will be handled by the administrative head of each department.

Chapter 6 pertaining to the department of civil service establishes prohibitions against political activities by any person in the civil service of the county. Such prohibitions, however, do not preclude the right of any person to vote as he chooses and to express his opinion on all political subjects and candidates or to be a member of any political party, organization or club. This section on prohibited activities has been copied verbatim from the charter of the City and County of Honolulu.

On all boards no more than a majority of the members can belong to the same political party. No employee or officer of the state or the county shall be eligible to serve on most boards. This is not applicable, however, to the board of trustees of the Maui community hospitals and the managing committee of Kula sanatorium and general hospital.

ARTICLE IX

FINANCIAL PROCEDURES

Article IX sets forth the procedure for adopting the budget and capital program for the county.

A major change from present practice is that under the proposed charter, the county shall be operating on a fiscal year basis from July 1 to June 30. In this way the county budget and capital program may be coordinated with the real property tax rate.

Centralized purchasing is not mandated by the proposed charter, but the mayor may at his discretion establish a centralized purchasing system.

ARTICLE X
CODE OF ETHICS

Article X sets forth a code of ethics for employees and officers of the county. The code of ethics has been copied verbatim from the code of ethics of the charter of the City and County of Honolulu.

ARTICLE XI
INITIATIVE AND REFERENDUM

Article XI sets forth the powers of initiative and referendum and how they are to be exercised. In the introduction to the Model County Charter, the National Municipal League states: "Much of the disparagement to which the initiative and referendum have been subjected in recent years is the result not of the intrinsic weaknesses but of the inadequate procedural and other safeguards." Thus, it was thought best to set out the procedures for initiative and referendum petitions in detail in the charter. The initiative and referendum powers, as set forth in the proposed charter, cannot be used in the fiscal field as has been done in other jurisdictions, to interfere with the attempts of responsible officials to achieve a properly balanced long range fiscal program related to overall needs.

ARTICLE XII
RECALL

Article XII sets forth recall procedures which will be applicable both to the mayor and other elected officials. Petitions for recall must be signed by not less than twenty percent of the voters registered in the last general election.

ARTICLE XIII

Article XIII sets forth general provisions applicable to the county.

Section 13-4 makes it clear that members of the various boards and commissions appointed by the mayor, with or without the consent of the council, can only be removed for cause by the mayor and with the approval of five members of the council. As far as advisory boards and commissions are concerned, the mayor may remove members of such boards and commissions at his discretion.

Section 13-13 requires that each county officer shall take and subscribe to such oath or affirmation as shall be provided by law. At present Section 5-20 and Section 144-24, Revised Laws of Hawaii 1955, sets out the form of the oath to be taken and subscribed by elected officials and employees of the state or its political subdivisions. Section 4 of Article XIV of the State Constitution also has a form of the oath.

It was thought best to leave the form of the oath as prescribed by law instead of setting it out in the charter itself. This is because the legislature may from time to time change the form of oath prescribed for elected officials and government employees.

Section 13-14 pertaining to the impeachment of officers is applicable to both the mayor and council members.

ARTICLE XIV

CHARTER AMENDMENT OR REVISION

Article XIV sets forth the manner in which the charter may be amended or revised.

Section 14-4 provides for mandatory review ten years after the adoption of the charter and at intervals of ten years thereafter.

ARTICLE XV

TRANSITIONAL PROVISIONS

Article XV sets forth the transitional provisions in order that the change from the present system to the strong mayor-council system may be effected smoothly.

RECOMMENDATIONS OF THE CHARTER COMMISSION

During the course of its deliberations, the charter commission studied the present functions of the County of Maui. Many members of the public were under the impression that the charter commission could change some of the functions of the county. The commission, however, has been advised that Section 16 of Act 73, S.L.H. 1963, reserves to the State Legislature all laws relating to the fiscal powers of the county. Thus, the commission is powerless to abolish present county functions or to transfer present county functions to the state. For example, the charter commission members almost unanimously were of the opinion that the state should take over and should pay for the cost of operating the district courts, especially since the district court magistrates are appointed by the chief justice of the supreme court. To abolish the function of the district court as a function of the county, however, would have meant imposing an additional financial burden on the state. This would be contrary to the provisions of Act 73.

Thus, in certain areas the charter commission can only make its recommendations.

The Maui County Charter Commission accordingly makes the following recommendations in the area of state-county relationships:

1. Place the district courts under the jurisdiction of the state, cost of operation to be borne by the state.
2. Place the indigent burial program under the jurisdiction of the state department of social services. The determination as to who is an indigent can be made more efficiently by the department of social services.
3. Place the program of medical care for county and state pensioners under the state. This again should be a function of the state department of social services. Since the transfer of the medical indigent program to the department of

social services, the medical care for county and state pensioners program has become an anomaly within the county government. This program also can be more efficiently carried out by the state department of social services.

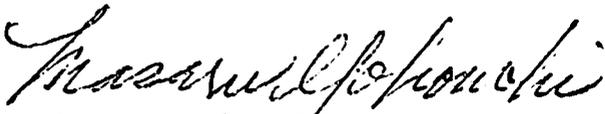
The proposed charter submitted herewith is by no means a perfect document. Also, by no means are all provisions acceptable to all the members of the charter commission. As in the formation of the State Constitution, compromises have to be made in drafting a charter.

The members of the charter commission find as a whole, however, that the proposed charter will provide a better form of government for the County of Maui than the present form.

Finally, we wish to thank the members of the Board of Supervisors and other county officials and employees for the cooperation given to the charter commission.

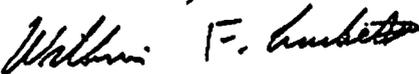
Dated this 17th day of June, 1964.

Respectfully submitted,



Masaru Yokouchi
Chairman

Cornwell Friel
(Excused)



William F. Crockett
Vice-Chairman



Shiro Hokama



Emil Balthazar



Nadao Honda



C. H. Burnett, Jr.
(With reservations)



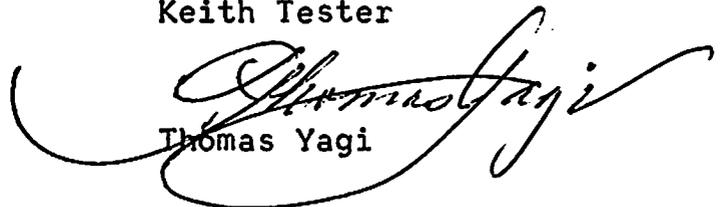
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