

MINUTES OF THE MAUI COUNTY  
CHARTER COMMISSION

DATE: July 21, 1975  
PLACE: Cameron Center, Wailuku, Maui, Hawaii, 96793  
CALL TO ORDER: 4:00 p.m.  
PRESIDING: Monsignor Charles Kekumano, Chairman  
MEMBERS PRESENT: Monsignor Charles Kekumano, Chairman  
Paul Mancini, Commission Attorney  
Edwina Bright  
Margaret Cameron  
Hideo Abe  
Catalino Agliam  
Ralph Murakami  
Lloyd Sodetani  
MEMBERS EXCUSED: Stephen Petro  
Joseph Souki  
Allan Sparks  
OTHERS PRESENT: Judge Cable Wirtz  
Mike Town, Attorney for Legal Aid  
Wilma Stegmuller, Secretary for the Napili-Honokowai Taxpayers' Union  
David Slocum, Press

Minutes

The minutes of the meeting of July 21<sup>st</sup>, 1975 were distributed by the secretary; after deliberation by motion duly made and seconded said minutes were approved by the Commission.

Schedule of Meetings

Mr. Mancini suggested that the Commission consider modifying its schedule of speakers to include the chairman of the Police Commission as well as the County Clerk. He also explained his discussions with the staff of the Department of Planning concerning a possible workshop with the Charter Commission on the functions and powers of the Department of Planning. After discussion, by motion duly made and seconded, the Commission moved to amend its schedule of speakers to include the chairman of the Police Commission and the County Clerk.

Bar Association Presentation

Monsignor Kekumano welcomed Mr. Town and Mr. Wirtz and asked them to proceed with their presentation.

Mr. Town distributed a memorandum to the Commission concerning Maui County Bar Association's suggestions regarding the proposed County Charter.

Mr. Town explained that he and Mr. Wirtz were appointed as a committee of the County Bar Association to review the Maui County Charter and to provide recommendations on behalf of the Bar Association. He related that the committee had four meetings including one meeting with the Executive Committee of the Bar Association. Neither the committee nor the Executive Committee could come to a consensus on many issues but the Executive Committee did provide authorization to the committee to provide the following recommendations to the Charter Commission:

Recommendation

- 1) An office of the Prosecuting Attorney should be established separate and distinct from the office of the County Attorney.

Mr. Town referred to his position paper and stated the reasoning for this recommendation. He stated that the position of the Bar Association on the issue of an office of Prosecuting Attorney reflected several factors; namely:

- a. that state statute provides that the prosecutor derives authority from the Attorney General;
- b. that specialization and resultant efficiency will emanate from a separated office;
- c. that an appearance of political influence or conflict of interest would be avoided;

Mr. Town stated that the Bar Association took no position on whether the prosecutor should be appointed or elected--however; it was the position of the Bar Association that the term of office of the prosecutor be four years. This was deemed necessary in order to attract competent attorneys from both the private and public sectors of the legal profession.

With regard to the appointive/elective issue, Mr. Wirtz stated his personal preference for an appointive office. His reasoning was that attorneys should not be politicians--running for office requires campaign financing and political conflict. This may deter many attorneys from running for the office of prosecuting attorney.

Mr. Wirtz also stated that a limitation on terms is bad; this creates lame ducks. He stated that if someone is not qualified for a position it will show up in time.

Mr. Town expressed his opinion in favor of an elective office. He felt that it was healthy to provide an environment for a candidate to run on a reform platform as well as having the prosecutor directly responsible to the people.

#### Recommendation

- 2) The Council should have the unfettered authority to retain its own attorney or special counsel.

Mr. Town stated that the present system of having the County Attorney advise the council was considered unsatisfactory. He commented that there was no logic in the existing provision; the council should have the manpower to act as it sees fit. Conflict with the administration was seen as a healthy thing.

Mr. Wirtz stated that the Charter should place the buck where it is. He stated that the same logic applied to the auditor--possibly this should be a mandatory position.

#### Recommendation

- 3) The County would have its own County Attorney who is counsel only for the County administration and responsible only to the County administration. The County Attorney would not be responsible to the Attorney General as with the prosecuting attorney, nor would he be available to the Council upon request. This separation of functions would better serve the diverse interests now served by the County Attorney's office.

Recommendation

- 4) A member of any board or commission should not serve beyond the time when his/her term expires unless he/she is specifically reappointed. A vacancy should be automatically created upon the expiration of a member's term.

Mr. Town explained that the common law would provide that board and commission members keep their status where the Charter is silent on the vacancy issue. Here, the Bar Association recommendation would mandate the appointment of new members when a term expires.

Recommendation

- 5) Reaffirm the application of the Hawaii Administrative Procedures to the operation of the County Departments, Boards and Commissions.

Mr. Town indicated that the APA was State law but often County officials did not comply with provisions of the Act. Usually, the officials were unaware of the Act. By adding compliance within the Charter, Mr. Town felt that the added emphasis would assist in the administration of County Government.

Recommendation

- 6) All Commissions should be purely advisory in function so that efficiency and accountability are insured.

Mr. Town stated that this recommendation included the Planning and Police Commission.

Mr. Wirtz commented that this recommendation would identify and centralize responsibility. He related that the Police Commission may create a problem in this area. However, the Police Chief is part of the administration and therefore should structurally come under it. Also, the Police Chief should be removed only "for cause". Mr. Wirtz gave his opinion that commissions tend to run a foul and most often are not sure of what they are suppose to do. Independent commissions provide for no democratic accountability. He stated that the Mayor should appoint the Chief of Police with the advice and consent of the Council. If a new Mayor was elected, the Chief of Police would remain part of the new administration.

Recommendation

- 7) The Bar Association would take no position on the issue of Council districting.

Mr. Town stated that diverse opinions existed among Bar Association members concerning the issue of districting. There was no consensus among the members.

Mr. Wirtz gave his personal opinion that single or multi-member districts were not good. He explained that log-rolling inevitably followed districting. In Mr. Wirtz's opinion an at-large system provides the best form of government--in an at-large system each area would have nine councilmen rather than one. He stated that the present structure with regard to Molokai and Lanai is not helpful.

Mr. Wirtz felt that the Commission should institute a pure at-large system or it should use the existing legislative districts for a two district system; here three would run from each district and three at-large.

## Bar Association Presentatio

Mr. Town spoke in favor of single member districts. He felt that the people wanted someone to go to. Single member districts would, in his opinion provide for accountability to the people. He felt that trading of votes and log rolling were inevitable under any system and such conflict was probably healthy.

Mr. Town recommended that the Commission not be concerned with the Supreme Court's decisions and the one-man, one-vote rule. He believed that the Commission should do what it felt best for the County. If the issue went to court and the Commission was defeated at least a valid attempt would have been made to serve the best interests of Maui. Mr. Town stated that a severability clause would insulate the Charter from failing on other issues if it failed the issue of districting.

## A.P.A. Issue

Monsignor Kekumano questioned the logic of restating a state statute in the Charter.

Mr. Town conceded that this may not be appropriate. He suggested that the Commission consider emphasizing the A.P.A. applicability to County government in its report to the Council and the Mayor.

## Board of Water Supply

Mr. Mancini asked whether the Bar Association's recommendation with regard to boards and commissions applied to the Board of Water Supply and the Liquor Commission.

Mr. Wirtz stated that it did. It was his opinion that the department of Water Supply should be under Public Works. He said the same logic applied to Parks and Recreation.

Mrs. Cameron questioned whether this would create a monster in Public Works.

Mr. Wirtz stated that all divisions would be accountable to the Mayor; responsibility and accountability would be clear.

With regard to the Liquor Commission, Mr. Wirtz stated that he would have to check the State statutes to determine whether this Commission could be advisory. He indicated that the State controls liquor through statutes and possibly this could not be an advisory Commission.

## Board of Appeals

Mr. Sodetani warned that advisory boards might result in problems such as with the Board of Appeals. Here, the advisory nature has made this board quite restricted.

Mr. Wirtz stated that the Charter Commission should avoid delegating undue authority to those not elected. He cited the strange power that existed in the Planning Commission. His view was that this power could go unchecked and uncontrolled and at the same time representing no one and accountable to no one.

A discussion followed on the powers and functions of the Planning Commission.

## Police Review Board

Mr. Mancini asked whether the Bar Association was in favor of a Police Review Board.

Police Review Board

Mr. Wirtz stated that he was in favor of grievances against the police being conducted outside the Police Commission. He felt that the Police Commission would become defensive in this role and an obvious conflict would arise, in that they would tend to defend the Chief and the department.

Mr. Town stated that the current tendency is to go to Federal court and seek civil damages against the police. He believed that the police should review and act on its own problems.

Ethics Commission

Mr. Mancini asked for the Bar Association's opinion with regard to an Ethics Commission.

Mr. Wirtz stated that this is a vital area. He commented that there should be a continuous full disclosure by all elected officials. If a conflict of interest would arise the vote of that official could be challenged.

Mr. Town suggested that a joint meeting be held between the Charter Commission and the Bar Association. Monsignor Kekumano asked Mr. Mancini to inquire into this matter with Mr. Krueger, the Bar Association president.

Monsignor Kekumano thanked Mr. Wirtz and Mr. Town for their time and effort.

Mr. Mancini reviewed the tentative schedule and work load before the Commission. He suggested that there existed a need for some research help for a limited period of time in preparation for final commission and committee reports prior to and in preparation for public hearings.

A discussion followed on the nature of the work currently before the Commission. After discussion, by motion made by Mrs. Cameron and seconded by Mr. Agliam, the Commission unanimously moved to authorize Mr. Mancini to hire by contract the research assistance necessary to complete committee and commission reports prior to public hearings.

Mr. Agliam asked whether the compensation to Mr. Mancini was to be adjusted, based on the increasing work load. Monsignor Kekumano asked Mr. Sodetani to confer on this issue with Mr. Mancini and to report back to the Commission.

There being no further business before the Commission, the meeting adjourned at 6:10 p.m.

Next Commission meeting will be on July 28, 1975 with Mrs. Nora Cooper, Maui Chamber of Commerce president at 2:00 p.m.

Respectfully submitted,  
Leonora Balidoy, Secretary