

CHARTER COMMISSION
MEETING MINUTES
FEBRUARY 13, 1992
COUNCIL COMMITTEE ROOM

Present

Sherrilee Dodson (Vice Chair)
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Allan Sparks
Anne Takabuki
Deborah Wright
Susan Nakano-Ruidas (Staff)

Excused

James Cockett
Jamie Woodburn
Lloyd Yonenaka

Guests

Bob Bathae
Paul Mancini

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:09 p.m.

II. PUBLIC TESTIMONY

None.

III. APPROVAL OF MINUTES

Chair Nakasone recommended approval of minutes for the January 16, 1992; January 27, 1992; January 30, 1992 (two) and February 6, 1992 meetings.

IV. COMMUNICATIONS

The following Communications were accepted by the Commission:

- A. Communication 92-02
1/24/92 Letter from Donn Takahashi, Chairman, Salary Commission requesting to speak to the Charter
- B. Communication 92-03 (Substitution of original 92-03)
Proposed Charter Amendments re: Corporation Counsel and Prosecuting Attorney, submitted by Goro Hokama
- C. Communication 92-04
Proposed Amendments to the Department of Fire Control, submitted by "Doc" Evans
- D. Communication 92-05
Copy of County Codes relating to the Department of Liquor Control, submitted by Frank Silva
- E. Communication 92-06
Public Testimony of Fred Rolwing re: requested change to Department of Planning (presented at 1/30/92 Public Meeting in Makawao)
- F. Communication 92-07
Public Testimony of Tom Cannon (presented at 1/30/92 Public Meeting in Makawao)

V. COMMUNICATION

- A. Bob Bathae, former chairman of the Big Island Charter Commission, noted that they "started off with an education process for the Charter Commission. We made all the cabinet people come in--the mayor, the former mayor, the prosecutor--we brought them in and grilled

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A. Bob Bathae (Continued)

them about how county government works. Then (we asked ourselves) what structure do we want? Do we want a strong mayor form of government? Do we want a weak mayor form of government, or city manager type of government?

The city manager passed out of the picture - it was almost overwhelming when going back and changing the basic structure from the present strong mayor. It would have involved more work than the Commission was prepared to do. There were good points about it, but it would have meant a complete change. We stayed with what we thought it should be - strong mayor. Our system had a strong council as well at that time.

I had some personal goals when asked to sit on the Commission:

1) Try to do a good job, to be unbiased and come up with some good suggestions to put before the electorate; and 2) as an attorney, end up with a good, clear document, so that we could try to end the squabbles that had gone on between the mayor and county council. I thought that goal would be easy to attain. It's not necessarily always possible to do that.

You can do all your work to rearrange this so it makes sense, put it in front of the voters, and they vote it down. You're right back where you started. It can just fail, despite your best efforts. So don't be too disappointed if you end up with some of the same confusions that you started with.

I don't believe there ever was a concensus between members as to how they should make their decisions. There were two schools of thought. Are you going to come up with what you personally think are the significant issues, in your personal opinion, or are you going to have your ear out for what you think the people think they want. We never got beyond that basic thing - some people operated one way, and some the other. My own feeling was, if I spent all that time gathering all that information, and tried to listen in an unbiased fashion, that I should know what choices should be out there.

I would urge you also, you better keep it very simple. We ended up with probably too many issues, and we cut hard. You learn so much. Then we ended up in a fight with Corp Counsel as to whether or not we could have

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A. Bob Bathae (Continued)

two elements in the same issue. And, he told us what we could do, and we told him what he could do with his opinion. So, we came up with a Charter amendment that took away his power to phrase the questions. Took it so that the Charter Commission in the future could phrase the questions and join things together.

There is an issue as to whether you should have more than one item in the same question. For example, on the single member districts. It ended up coupled with a reduction in term. Well, logically those should be separated. We ended up with them together. What happened on the single member district issue--there were a bunch of people for it, for varied reasons: less expensive for the candidate to run; office more accessible to new comers; interests of districts could be voiced. There was lots of testimony for it. This gave them the tie to that district, but they had to be responsive to the island of Hawaii as a whole. That was my position and the position of organized labor. I liked the idea, on important public issues, that every single person on the Council had to listen to you.

How the two years came about was a funny bit of politics. There were a lot of people who wanted single member districts, who also wanted two year terms--you could get the rascals out quicker, was the rationale.

The Commission thought two years was not enough; thought four years, same as the mayor. But, when the issue came up, whoever was managing this struggle to put the single member district on the ballot, it got included; and the people who were against the single member district voted for the two year term, thinking very cleverly 'nobody in the electorate would buy that, so it would take the whole thing down to defeat with it.'

I think that's how it came about--the voters won't take that. However, the voters did take that, and we ended up with a two year term. We didn't want a two year term, but that's what we got. We don't know how it's going to work.

The business community and organized labor are very close on our island. We have very similar objectives to keep the economic machine functioning in a reasonable fashion. I can feel the council people pulling back from problems that are of island-wide concern, and focusing on their particular constituencies. Because, that's the only people they have to satisfy. That's

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A. Bob Bathae (Continued)

not necessarily a bad thing, although if you are from a district that elects a weak person, you're in trouble, because nobody else has to pay any attention to you.

Having been involved with the Council and administration, I didn't think I was going to like it, because I wanted everybody to feel like they had to listen to us because they are elected on an island-wide basis. A lot of people have said 'you are better off, because they don't have to look at any consequences outside of their district! Whether this is going to be true or not, I simply don't know. But, I know there's going to be a lot of horse trading back and forth. And, what it really will amount to, and I think this is the most dangerous, is that five people can then completely shut out the other four. That was my primary concern.

From the business perspective on our island, we've tried to get away from the east/west divisions--to think of the island as a whole. If (some of) the members want, they, with relative impunity, can shut out the rest of the island; that was a big personal concern. I'm not suggesting it will happen, but I can see them isolating themselves and appealing only to the narrow interest of their voters. I can see the Council people already starting to pull back into that mode. Whether it's bad or good, that's what's going to happen.

The politician's first job to himself is to get re-elected. And, if he's reelected from a district, then he's going to do whatever he has to do in that district, take whatever position. He doesn't have to focus on the island-wide perspective. You couple that with a two year term... You've greatly strengthened the hand of the mayor.

The Council should be a policy making body. It's set up as a part-time function. They don't have the technical expertise that the full-timers have in the various departments. They are people just like you and I. The administration executes that policy, hopefully. I think I've fairly summarized the two opposing views."

Paul Mancini: "There was a move to combine the question of a two year term with a question of the single member districts, for the intent that you thought the voters would turn it down - because you had the two year term in there. Do I understand that correctly?"

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A. Bob Bathae (Continued)

Sparks: "It certainly backfired. Why didn't they know what the voters felt about two year terms?"

Bathae: "I think everyone, the average person on that particular Commission, thought that a two year term was simply too short; that they would spend all that time campaigning and not minding the business of the council.

So, wrongly they assumed 'that should be obvious to everybody, and so the voters aren't going to vote it in.'"

Mancini: "Was it the fact that there was a lot of public support for single member districts, and you felt you had to do something because of that strong public support?"

Bathae: "A lot of members thought so. I wouldn't have put it on the ballot. It got there because a lot of the majority of the Commission voted to put it on the ballot. As a matter of fact, I voted the wrong way. I'm not putting anyone down on Maui, but what we assumed was that the electorate wouldn't go for it."

Sparks: "That's the error. Our electorate wants the two year term - the 'keep them on a short leash' notion."

Bathae: "Then you have to go back and face the question I said we never got a concensus on. You spend all this time listening to testimony and stuff, and trying to think of what's best for your county. And, are you going to make up your own mind--'I don't think that should even be on the ballot'; or, are you going to give the people the chance to poison themselves, because 'this is what they want to do,' and do it? I think it's the same problem every legislature should face--are you going to be out there with your finger in the wind, and then without any further thought, head in that direction; or are you going to say 'I hope as a council person, I have superior sources of information, as compared to the electorate who reads the newspaper.'"

Nakasone: "Was there any public input on the terms--two or four year, or about the same?"

Bathae: "Yeah. What I find you get are alot of people taking positions because it's the thing to do. It becomes a fervor; it's a cause. People pick something, then go for it."

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A. Bob Bathae (Continued)

Mancini: "Was that the most controversial issue?"

Bathae: "Another one, that was kind of fun and one of the things we got into a fight about, was the budget. The mayor had the power within her department to transfer funds without the consent of the County Council. But, in department to department, you had to have a resolution of the Council.

The Council always wants the power that rightly belongs to the administration, and the administration always wants to dig into the province of the County Council. That was one of my personal goals, to try to clarify those relationships.

Our proposal was not to change that system--we simply required the executive to notify of departmental transfers. The mayor ought to have the power, but ought to notify the Council as a courtesy."

Mancini: "How do you create the budget--in large lumps or in small amounts?"

Bathae: "On Oahu, with a budget approaching a billion dollars, they had 900 items. Big Island, with a budget of \$120-140 million, had 1600 items. Maui, with its 360 items, made more sense to me. In other words, our Council was down there counting pencils; where on Maui I would have assumed the Council had more time to set policies--to look at programs--to check back from time to time to see if administration was doing policy. If you have 6000 different categories that the Council has to pass on, then who's administrating--the Council or the administration? If the Council is going into that much detail into the budget, what happened to their policy role? They should be out holding hearings.

We actually made a very substantial change in the budget proposals. I didn't feel they made alot of sense. We had a very talented Commission, very independent souls; nobody pushed them around.

I tried to get a deputy finance director and a deputy managing director so that we would mandate a person as number two. I thought that, as these budgets have grown to \$120-130 million, I felt it was an absolute waste of time for the budget director to be up in front of the Council half the time, when he should be having other things to do with a budget this size."

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A. Bob Bathae (Continued)

Mancini: "Our Charter doesn't specifically identify deputies; I stand corrected, one deputy, of the Department of Water Supply."

Bathae: "We mandate in our Charter that the Charter creates certain deputy positions, so that the Council has to fund them. It went on the ballot with the full support of the Commission. The public voted it down. It would have created positions and cost money.

The budget change that was voted in was that the mayor had to submit a proposed operating and capital budget by March 1, instead of May 1. To me, this was preposterous. Historically we've had to depend on the State Legislature to meet operating deficits. Why go through the exercise when you talk about a March budget, when you don't have a lot of information in. Why do it? The Council's complaint was they didn't have much time to look at the budget. The Council had to get their act together and do a lot of work in a short period of time. But, the Council's view prevailed, and that was adopted.

You guys are really fortunate that you have a former managing director and former council member on your Commission."

Nakasone: "Is there any reason why we are stuck with this fiscal year?"

Bathae: "We didn't feel that it could change, and didn't have the expertise to know if we could change it."

Nakasone: "It seems to me that the counties rely on State revenues, and you look at the time constraints to come up with packages. If you were to use the Federal fiscal year, to me it would fit real well with the review of the budget. I know our Council and mayor would have a difficult time relying on revenues from the state. Generally, you don't look at state revenues to be included in CIPs, to be part of the operating budget."

Bathae: "Actually, I think the Big Island does well, because on the whole, Joe Souki and Yamasaki are thinking on a state-wide basis. They are not really narrow minded people."

Sparks: "Why couldn't we expect that to happen on a county-wide level? In survey information I've read,

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A. Bob Bathae

Sparks (Continued): they find right behind concern for the district, is concern for the region. I'm concerned about five people shutting out the rest of the Council. In 'real politics' aren't there alot of shifting coalitions, different camps on different issues, negotiating all the time?"

Nakasone: "I've seen it happen. I have concerns on districting; five can really shut out the rest. Basically, when you get into single seat districts, it's generally CIP projects--alot of times they try to trade off general law for CIPs. The majority felt 'let's ice them out'. What happended was the budget got involved with other proposed bills, so they got confused, and CIPs got mixed with general laws. The argument for NOT wiping them out was that 'you represent the whole area.'"

Bathae: "I saw it in the reverse. District attachment was there. We needed an increase in fuel tax. The Council hates to do a tax. Dante Carpenter took the bull by the horns; he got the business community and the ILWU interested in it. Everyone did everything possible to give the Council okay to pass it, and they did. So you can see it in reverse.

The districts were just an artificial line, not relative to anything else. And, there was no way to make the districts homogeneous--so that they would reflect a single view. Where ever you set your geographic districts, doesn't mean there's going to be unanimity in that district or area. You're going to get areas joined together that have nothing in common. Let's say you go for nine of them..."

Sparks: "You're talking about a process that I went through. You've got it easy; one island. We've got three."

Bathae: "Maybe that's an even stronger reason why people should be elected from all over."

Fabrao: "What are your feelings on biannual or annual budgets on Hawaii?"

Bathae: "Annual. There were questions, but I can't remember. You'll come up with forty issues, squeeze them down, and nobody even remembers them. Half the people who vote don't understand them. That was the problem.

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A. Bob Bathae (Continued)

With the initiative, some people wanted full on initiative. There was a proposal to change some procedures. What we submitted to the voters was just incipiel procedural changes. What we wanted to put in there would have eliminated the present powers of initiative. But it was such a 'motherhood' issue. Most people on the Commission thought that it was a bad idea. We looked at California with its 44 issues, two of them diametrically opposed, and both passed.

Takabuki: "How many questions did you have on your ballot?"

Bathae: "Is your Charter degendered?"

Takabuki: "Not yet."

Bathae: "That was a big one and we had alot of fun with it."

Sparks: "You can put degendering on the ballot and then have someone just go ahead and change it."

Bathae: "We had 17 (questions) and then the council through in one, to give the council the power to enter into contracts for services necessary to the exercise of its legislative power."

Sparks: "Did it pass?"

Bathae: "I think it failed."

Nakasone: "This is what I was concerned with. The Council can still put some proposed amendments on the ballot. You have three sources that can put proposals on the ballot: the (Charter) Commission, the Council by resolution, and also by petition. You can have two opposing views."

Sparks: "You have several departments appointed by the mayor and approved by Council; is it all of them?"

Bathae: "Just about all, except Fire and Water Commission. We changed the Salary Commission..."

Takabuki: "Do they set or recommend?"

Bathae: "The set. Under the preexisting, the Salary Commission set the salaries of the Council, and the Commission was appointed without Council approval. The County Council set the salary of the mayor and prosecuting attorney. In the proposal that was submitted, the Salary Commission would set the salaries of the

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A. Bob Bathae (Continued)

mayor and prosecuting attorney, in addition to the salaries of the Council, but they would be appointed by the mayor and confirmed by the Council. And, that did pass.

Then they had a bunch of questions about minimum qualifications. I think that was voted in, in a very close vote."

Nakasone: "On Maui, all appointed by the mayor are not confirmed by the Council, but for removal, the mayor can remove without confirmation. Only on hiring they need confirmation of the Council. What's the logic to that?"

Bathae: "I suppose it's tempered by the fact that the new person has to be approved again by the Council. You don't want to force the mayor to work with somebody; I think that's the fundamental reason. The managing director is appointed by the mayor and removed by the mayor."

Nakasone: "That's the check and balances."

Mancini: "I assume the Big Island doesn't have a provision dealing with temporary appointments?"

Bathae: "No. We had a proposal that required the Council to act or confirm, or deny the mayor's appointment within 45 days, and a department head within 60 days. And, if the Council didn't act within that time period, it was deemed to be confirmed, and they took office on appointment.

Dante and Steve Yamashiro, chairman of the County Council at that time, got into a fight because Dante appointed people and then swore them in. Yamashiro took the position that since they weren't confirmed, they couldn't be appointed.

Well, I did a paper on that and Yamashiro was wrong. You don't have it in there as a void; that one did pass. That really is not a fair situation--a person needs to know whether they have a job or not."

Mancini: "In the controversy here (Maui), the mayor sends down appointments, the time element wasn't that significant. The Council denies the appointment. The mayor keeps the existing officials in those slots until a new appointment comes down. The issue is the

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A. Bob Bathae

Mancini (Continued):

the people who were initially appointed as acting maintaining that position after being denied that position by the Council."

Bathae: "These were positions where the Council was required to approve? I think I would have taken the position that the person takes an office upon appointment, subject to confirmation of the Council. And, if he doesn't get the confirmation, then they are out."

Mancini: "It takes awhile to get someone else. What happens in between?"

Wright: "That was the real problem. What happens in between, because they needed someone to head the office. And, it had to be clear that they had the authority, and so there weren't alot of challenges to these acting people. On the theory that you are talking about, once the confirmation was denied, then the theory was that 'we'll challenge the County's actions on everything.'"

Bathae: "My own reaction would be that they are out. They can't stay on as acting because they weren't approved by the Council. They are gone. The mayor would appoint somebody else, and they would have the job until the Council disapproved them. But, I don't think you can have the same person who was rejected."

Mancini: "You get the political problem. The mayor's person is up there, that person is denied, and all of a sudden you say 'Gee, I have to, in one instant, make my next appointment.' One theory is you can appoint someone temporary, that doesn't have to be 'my' full person to go down. But there's nothing in the Charter that tells you you can do that. Once you make an appointment, that name goes down subject to the Council's confirmation. But, 'I've got to make that decision instantaneously', or are you going to be ready, assuming that your people are going to be rejected, so you have the number two ready to go."

Bathae: "But, if you keep the same person on as temporary, you're keeping on a person that the Council has rejected, when they have the power to reject."

Wright: "Maybe there needs to be some sort of a thing for temporary status, because right now there's nothing temporary either, so you've got a gap. What happens to

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A. Bob Bathae

Wright (Continued):

the legal offices in the County? Do they just come to a halt, or they can't take any action because no one is in charge? You can't have that kind of gap. If the acting can't stay on, what happens?"

Sparks: "If the mayor appointed someone else, not the one rejected, as acting while she took the time to find a full time..."

Wright: "There's nothing that says they can do that. There's nothing for acting or temporary right now."

Mancini: "The Charter doesn't give any guidelines."

Bathae: "The Big Island Charter says 'each department head shall continue in office until removed.' I remember we debated this idea."

Mancini: "It seems to me that if the Council doesn't have the confirmation right, you probably can do anything you want, because the person serves at the whim of the mayor. It only comes into play when you have the confirmation process."

Sparks: "Can't we fix that with some language or something?"

Dave DeLeon: "The Council made a run at it yesterday, and ended in a four - four tie (see Communication 92-03 Substitution)."

Bathae: "I think it's worked out pretty well with the Council (on the Big Island). It's predetermined; the administration 'floats' a list and the Council floats back a response."

Sparks: "Are you aware of any situations where the names she floats didn't float? Do you remember any denials?"

Nakasone: "Sounds like more of an advise/consent, rather than appointment and confirmation process."

Sparks: "Are you familiar with any person refused appointment because they refused to go through the process?"

Bathae: "It's not like going for a Federal judgeship."

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A. Bob Bathae (Continued)

Nakasone: "I thought there was a case on the Big Island of the appointment of the Fire Chief, and the former chief testified against the appointment."

Bathae: "The Council did confirm the appointment."

Reyes: "So, those being rejected by the Council, (it) is not because of qualifications, but of politics?"

Bathae: "No. I think sometimes the Council questions qualifications."

Nakasone: "The Hawaii County Charter gives a stronger check and balance system than our county, in regards to the Council and mayor."

Sparks: "I can see why ten years later you would need a reapportionment. Why not the first one done by the Charter Commission?"

Bathae: "It took the reapportionment committee an inordinate amount of time. You could do it, if you wanted to. We simply mandated that the old districts be followed."

VI. ADJOURNMENT

There being no further business, Chair Nakasone adjourned the meeting at 5:39 p.m.

APPROVED:


Robert Nakasone, Chairman Date 3/12/92