

CHARTER COMMISSION
MEETING MINUTES
JULY 29, 1992
COUNCIL COMMITTEE ROOM

PRESENT

James Cockett
Sherrilee Dodson (Vice Chair)
Dolores Fabrao
Annette Mondoy
Robert Nakasone (Chairman)
Victor Reyes
Anne Takabuki
Deborah Wright
Lloyd Yonenaka
Susan Nakano-Ruidas (Staff)
Paul Mancini (Commission Counsel)

EXCUSED

Allan Sparks
Jamie Woodburn

GUESTS

Dave DeLeon
Mark Adams (The Maui News)
David Craddick
Larry Butrick
Warren Watanabe
Jim Smith
Guy Haywood
Daryl Yamamoto
Chuck Ornellas
Ernest HueSing
Margo Rogers

I. CALL TO ORDER

Chair Nakasone noted a quorum present and called the meeting to order at 4:06 p.m.

II. APPROVAL OF MINUTES

The minutes of the July 9, 1992, July 16, 1992 and July 22, 1992 Charter Commission meetings were approved as circulated.

III. COMMUNICATIONS

The following Communications were accepted by the Commission:

- 92-57 Letter from the Maui County Farm Bureau requesting that Water Department remain semi-autonomous, submitted by J. Nobriga and W. Watanabe
- 92-58 Letter requesting the dissolution of the Molokai and Maui Planning Commissions with return of power to county council; and requesting the county to establish procedures to regulate repair, construction and modification to single family residential dwellings, submitted by G. Peabody
- 92-59 Letter of clarification on proposed amendment to Section 8-4.3.7. (relating to the Director of Finance), submitted by W. Fujita
- 92-60 Memorandum re: criteria for granting variances (received at July 22, 1992 Commission meeting), submitted by P. Mancini
- 92-61 Description of residency areas using district numbers and identifying corresponding precinct numbers (received at July 22, 1992 Commission meeting), submitted by D. Yamamoto
- 92-62 Memorandum requesting that Water Department remain semi-autonomous, submitted by J. Hunter
- 92-63 Letter regarding change in terms of council from January to December, submitted by R. Kouchi
- 92-64 Letter regarding council district representation, submitted by West Maui Taxpayers Association, J. Lawson and M. Percell
- 92-65 Copy of 1988 Charter Amendment ballots, submitted by D. Yamamoto
- 92-66 Copy of 3-8.1 Revised Ordinances of Honolulu regarding additional

III. COMMUNICATIONS

- 92-66 (Continued) standards of conduct, submitted by D. Yamamoto
92-67 Written testimony presented verbally at July 29, 1992 Commission meeting, submitted by J. Smith

IV. PUBLIC TESTIMONY

- A. Warren Watanabe, Water Committee Chairman, Maui County Farm Bureau

Watanabe: You have received copies of a letter signed by James Nobriga and myself. [See Communication 92-57] The Maui County Farm Bureau is concerned about the proposal to put the water department under the administration's direction. We feel that farming is...agriculture is important to the state and this county, and at the present time we feel that Mr. Craddick and the department has shown a great deal of interest in preserving ag. Agriculture has had many problems in the past when the director was under the direction of the mayor. At the present time, the department is working hard -- along with Farm Bureau, the SCS and the state to try to develop a dual water system for upcountry Maui. Now, this has been neglected for many years and we feel that it is critical that the board and the director stay intact. The most critical issue we feel is continuity -- without it, we feel agriculture will die. As an example, on the island of Oahu Kazu Hayashida has held his position for fourteen years; on the island of Hawaii, Bill Suwaki...and on Kauai, Ray Sato...has held their positions for twelve years; without this type of continuity we feel not only ag but the whole island as well will suffer.

Chair Nakasone: Questions from the members? Sherrilee, you have a question?

Dodson: With the issue of continuity...since the water board has become semi-autonomous, we've gone through quite a few water directors; do you feel like that's part of the problem, or is that... I don't see how continuity's going to change whether it's under the administration or whether it's under semi-autonomous.

Watanabe: The Farm Bureau would like to see it be a nonpolitical position. The way we look at it, whichever way you go, there is politics involved...and we feel like, at this present time, we've worked...we've got a working relationship with the department that we feel we may lose. And again, I think the county needs to decide -- how important is ag in the upcountry area.

Dodson: So, you're concerned that if it comes back under the county that the...

Watanabe: Priorities may be shifted elsewhere.

Fabrao: Mr. Watanabe, from what we heard in the previous testimonies from the water department...that there is no specific plan ongoing to upcountry...

Watanabe: Well, I cannot answer to specifics, but the Farm Bureau has been in discussions with the department about a dual system for ag; and, we don't know how far it will go or if it will be done eventually...it may take ten, twenty years, but the last report I got from the state water commission...that is what the state would like to see also.

Fabrao: The other thing...regarding the political issue...you did say there would be political considerations either way. But, wouldn't you rather it be under the county as opposed to under private interests and big development?

Watanabe: I...what do you mean?

Fabrao: As an example, I mean you can't vote somebody out of office if you're not satisfied with what they're doing; the mayor can be voted out, but you can't vote big business out once they get ahold of the water system. How can you vote them out? How can you control that politic -- the politics of big business? I don't mean to put you on a spot, but that's what concerns me.

Watanabe: Well I think...the Farm Bureau feels more comfortable... What we're advocating is to leave the department as is -- semi-autonomous. Like we're saying, the continuity...supposing the mayor changes every four years, depending on how the people come around election time, and that department is under the mayor's direction. You know, there's no guarantee you're going to have a water director longer than four years, right?

Fabrao: That's true enough, but how do we know that Mr. Craddick will be in office for twelve or fifteen years like the others?

Watanabe: Well, one thing...there should maybe be... We're not saying the system right now is perfect; maybe there needs to be modification. Like, Farm Bureau does not have all the answers but this is the point we're trying to make...see that the present momentum that we've developed is continued, because agriculture is having a rough time right now.

Cockett: In our discussions, Mr. Hayashida did appear before this Commission and a case was made for full autonomy. If you had your druthers between full autonomy, semi-autonomy or under the county, which would you prefer?

Watanabe: Are you asking me personally or as a group?

Cockett: Well, whatever...

Watanabe: I cannot answer for Farm Bureau because we had not discussed this...

Cockett: I don't want to put you on the spot, I would just like to say that we discussed all three...not to put you on a spot...but we did consider those other possibilities.

Watanabe: Personally I haven't studied all the pros and cons of autonomy, but I would be willing to stick with semi.

Yonenaka: I just wanted to know...do you feel that perhaps the Farm Bureau or the farmers should have a representative all the time on the board? I mean, the farmers do use a lot of the water and it is more of their livelihood than anybody else as a personal user, you know. I realize it's a...

Watanabe: I would say Farm Bureau would like to have a person on the board, but then like it's been stated...that it should be done geographically or whatever...I think we should, as an organization, be able to talk to the person representing our district also.

Yonenaka: Do you feel that in the past when it was under the administration, or even before that...semi-autonomous, that the farmers were represented well?

Watanabe: I believe so, yeah.

Yonenaka: I was just wondering because there are times maybe part of the answer can be having a criteria for who all sits on the board. You know, you should have one person from this area, this district, this background...and I think maybe that might be one of the answers.

Fabrao: You're from the Maui County Farm Bureau; you represent which areas?

Watanabe: We represent the whole island and Lanai; we have members there.

Chair Nakasone: Can I ask you a couple questions? There's no member of the Farm Bureau on the board right now?

Watanabe: No.

Chair Nakasone: There was a proposed member?

Watanabe: Correct.

Chair Nakasone: You know, dealing with the question of continuity when you have a semi-autonomous board and the department under the administration...for example, our Charter limits the term of our mayor to two terms...that's eight years, so if it's under the mayor then you can see a change every eight years possibly at the longest. When you're in a semi-autonomous position where as long as the director and the department's working well and efficient, you won't see a change every eight years, most likely. You'll see a change sooner if the department doesn't pan out all right. But it seems like ...although I don't agree with the limited term of the mayor...that if we didn't have a limited term, you might have some continuity. What do you think of that? [LAUGHTER] I'm sorry; but, I think Lloyd has a good point in regards to some kind of representation because, no question, there's a direct impact to agriculture...and the program should require someone from the agricultural community.

Okay, any further questions? If not, Jim Smith.

B. Jim Smith, individual and resident of Haiku.

Smith: I'm here to testify on the amendments that appeared in the local newspapers. I have prepared a testimony, but before I speak to the more important issues, as least as far as I am concerned, I wanted just to point to two items; one was the office of mayor. It seems to me that the office of mayor should not be changed to the first day of September [sic] since the election is held on November 7th, and there are people...professionals that have been working with the mayor for perhaps four years, and they don't know prior to the election that the mayor's going to win or lose...it seems to me that that's to their job seeking abilities that the office of mayor should begin on the first day of January, to give them time to find other means of employment. The second concern I have is with the recommendation that you amend Section 8-3.3.a. It gives the investigators of the prosecuting attorney all the powers and privileges of police officers; that to me is a very dangerous circumstance in that there is a great deal of training and a great deal of skill -- at least we're told -- involved with the preparation of a police officer or a police detective, and it seems to me that any type of a police function should stay within that office and not be placed under another agency -- you might have a second force created, than the existing one. And, those are just concerns I have about those particular amendments but my main concern today though is twofold.

[SEE COMMUNICATION 92-67 -- Jim Smith written testimony. Mr. Smith presented this testimony verbally to the Commissioners.]

Chair Nakasone: Any questions? If none, thank you very much. Dave Craddick.

C. David Craddick, Director, Department of Water Supply.

Craddick: Thanks for giving me this chance to talk again. I wanted to try to emphasize again some of the things...I know the comment was made that the Honolulu Department of Water Supply is a well run operation, and it doesn't compare to Maui. I did go and dig up all the six changes here...session laws 1949, 1955, 1961, the change in 1977, 1983 and again in 1987. Okay, now the Honolulu Board of Water Supply started off in the 1890's...it was under the Ministry of Interior. In 1913, it came under the Department of Public Works, City and County of Honolulu. In 1915, they appointed a Honolulu water commission of five members; incidentally, in that 1899 one there, this minister of interior of the water department came under them after droughts in 1891 and 1894...anyway, in 1915, they appointed this water commission. The commission said things were basically a mess and something had to be done immediately to help out the water situation. In 1925, the legislature authorized Honolulu's sewer and water commission to expedite completion of sewer and water systems. That went along for a while, ending up where they felt that there was a critical water situation, and finally resulting in 1929, where the water department was set up as being a separate agency from the county. So, you can see there's about six changes between 1899 and 1930 -- over a period of thirty years -- that Honolulu fought through this changing back and forth...going under the administration, until they finally got to where they were a board. And, from then on they just had one period in the early 1970's where they went back under the mayor for a short period of time. And, I would still like to propose that that is the reason that they got where they are -- their managers were in for a long period of time. The longest period of time that this board has ever had a manager in is seven years, which was the early 1960's. And, Honolulu was without its problems too in switching around from one agency to another, and under one person's control and another person's control. So, I'll leave that one as my last effort, and maybe suggest to the Commission that they might give the board a little more time and look at maybe possibly reviewing this in another four years or something, after the board has had a chance to really do something. Thank you.

Chair Nakasone: Okay, questions? Victor.

Reyes: Some of the members of the Commission are under the impression that there's no plan for upcountry. Would you extrapolate on that? Is there or is there not? And, if there is, where are we?

Craddick: Okay, right now upcountry is on surface water. If we want to get off surface water it's going to cost more money. The wells that we're developing in East Maui is a plan. Now, if we accelerate the development of those wells and send that water upcountry, it doesn't cost us any more to develop those wells to send it upcountry. There has to be an ability to pay for those wells; right now, those wells...other than the state funding that we're getting, which will run out after the first two wells...will not carry through the full development. It will be the assessments fees that are paid in Central Maui that fund that. Now, if an assessment fee is also in upcountry, there's no reason why that water can't go upcountry; but, the plan is kind of contingent upon upcountry deciding that they want to pay for it. And, as soon as they decide they want to pay for it, I'm quite certain water will be going up there.

Reyes: Thank you.

Chair Nakasone: Okay, before we have any more questions...the Chair wants to remind

Chair Nakasone: (Continued) the members of the Charter Commission that this is the Charter Commission, not the water board, okay? So, any more questions? [LAUGHTER] Thank you.
Chuck Ornellas.

D. Chuck Ornellas, speaking as an investigator with the prosecutor's office.

Ornellas: Basically, I'd just like to address the July 22 meeting where Ms. Higa had a question about our position. I'd just like to briefly describe what our position...where our position came from. The prosecutor's office, in performing their tasks, need police assistance; and, at one time, they did request police assistance. It became a situation where they needed police assistance pretty regularly, and it was real difficult to coordinate between two departments the release of this individual. So, it was decided that the prosecutor's office would have a police officer permanently assigned; they called it an investigator. That investigator has police training; it's a police requirement that's part of the job description. In fact at this point, the requirement for the investigator is even higher than the requirement for a police officer. And, as the prosecutor's office grew, the investigator's grew; at this point we have four investigators. When the first investigator was assigned, the prosecutor's office was about fifteen people; now the prosecutor's office is seventy-five people, so it's grown proportionately.

Another key thing is all other jurisdiction's in Hawaii have the same situation where a prosecutor's office needs police assistance. They have investigators assigned also; all other jurisdictions have those investigators with police powers. That's basically all I have to say.

Chair Nakasone: Questions? Paul.

Mancini: I understand now the investigators do not have police powers in any of the jurisdictions, is that correct?

Ornellas: No, all jurisdictions but Maui County have police powers; they carry weapons and they have the authority of the police.

Mancini: And, that's emanated from where? Where did they get the police powers from?

Ornellas: Their individual Charters; my understanding also, there's the AG's...an extension through the AG's office gives the investigators the powers of a police officer.

Mancini: Well, if the AG's office gives it, then you don't need it in the Charter, correct?

Ornellas: I'm not real clear on that issue.

Mancini: There was some concern that a situation occurred...I think in the City and County of Honolulu...where you had the prosecutor's office basically conducting its own little police department, and that developed into a bit of a conflict with the police department who didn't have control over the investigators that had the police powers. And structurally, I guess it was related that this created a structural problem; are you familiar with that?

Ornellas: I'm familiar with the sheriff's department problem; not the investigators and the police department. Most of the investigators, that I'm aware of in Honolulu, came from the police department...it's a transfer-type situation. And again, it's to fulfill a need for prosecution. Ms. Higa made mention of zoning inspectors, building inspectors and liquor inspectors; they all do inspections, they all do investigations. But, when they

Ornellas: (Continued) determine criminal activities, they're referred to the prosecutor's office and we do the criminal investigation. So, there's a distinction between the two; it's just not investigators and investigators.

Wright: Did I understand you to say that you do have...the investigators in the prosecutor's office have the same training or more than police officers?

Ornellas: The requirement to be an investigator in the prosecutor's office is that you have police experience and criminal investigative experience, and now also college experience, so the requirements are even stricter for the investigators position in the prosecutor's office as opposed to the entry requirements as a police officer, which is eighteen years old and a high school education.

Wright: But do you have the same training?

Ornellas: Yes.

Wright: Okay, I understand you may have certain experience requirements, but also is...

Ornellas: The exact same training as the Maui County Police Department?

Wright: Yes.

Ornellas: People that have transferred from the Maui County Police Department have the exact training, yes.

Wright: Can someone apply and not have that training, and be accepted as an investigator into the...

Ornellas: They can be accepted as an investigator but they have to have police training in some jurisdiction; some other jurisdiction might have a higher degree of police requirements in training, some might have less but that's determinant on the hiring of that individual...if they feel that person doesn't have any equivalent police background that they want, then they would not hire that person.

Mancini: We received at the last meeting a letter from the Civil Service Department or Personnel Services which seemed to imply that there had to be some changes in the compensation plan or the level in qualifications...are you familiar with that at all?

Ornellas: No, I'm not.

Mancini: What was the problem in the sheriff's department that you alluded to...in Honolulu?

Ornellas: I'm not real clear; I know it had something to do with weapons. But again, the sheriff's office does not investigate criminal activity; they are custodians of criminals, and they do civil distribution of paperwork.

Chair Nakasone: Okay, any other questions? Ernest HueSing.

E. Ernest HueSing, investigator with the prosecutor's office.

HueSing: My primary concern is the section regarding the investigators. I was a police officer for twelve years; currently I'm with the prosecuting attorney's office for eleven

HueSing: (Continued) years. Under the Hawaii Revised Statutes, we are...we do have powers as a police officer; it is not, however, strictly defined by the AG's as to what we can do under those powers. We, as the investigators, are here to ask you, the people of the Charter Commission, to give us a strict guideline whereby we can work upon. Some of the problems that we have is that because we are not under the Charter Commission, the question is being said whether we are police officers or not; and, it is difficult to say to these people, whoever is asking us the question, that because of the Hawaii Revised Statutes we are. My concern on this is that someone spoke earlier that probably law enforcement should fall under one umbrella; be it so. But, within the prosecuting attorney's office, ninety percent of the work that we do is the followup work that the police officers cannot or have not done. There are two hundred sworn officers in the police department; you have ten beats...give one beat officer two cases, you have twenty for an eight hour shift. When it comes to our office, the attorneys cannot handle that load; they depend on the investigators. We will serve subpoenas, we will make interviews and interrogations; but, when you need to serve a subpoena at night when there's a party going on...and you know that they're having a big party...I don't think I want to be one of those officers that got shot in Honolulu...by the world's largest handgun, which is a forty-four magnum. I don't intend to carry a gun; I don't want to carry a gun. But, I want to have something to prevent that from happening to me. I can only urge that the members of this Commission vote on it and give us that faith of confidence. I want the continuity of the three other counties; they are all backed by their Charter...that the full responsibilities of a police officer be given to the investigators also.

Getting back to a question asked earlier about the sheriff's department... Although the investigation is still underway, it is not complete; the investigations of the sheriff's department was handled by the prosecuting attorney's office because all the others conflicted out; the AG's conflicted out, because it was a state agency. At that time, they didn't have anyone known as the department of public safety...we handled it, and we still are. As far as another question being asked...in the Honolulu prosecuting attorney's office, yes there was...it was an idea of having their own task force. But, many times you need to do that; many times you're going to investigate police officers -- who's going to investigate the police officers? Your own police department? Granted, they may do a good job...but how does the officer feel? This is where the prosecuting attorney's office comes in with their investigators. You need someone to do the investigation that has nothing to do with that department; and if that may be within the prosecuting attorney's office, then other agencies should investigate us. That's all I have to say.

Chair Nakasone: Okay, questions from members? If none, thank you very much. Margo Rogers.

F. Margo Rogers, speaking as an individual employed by the Maui County prosecutor's office.

Rogers: I have been employed there (prosecutor's office) for one year and I've come from the Maui Police Department with twelve years experience, with the previous two being as a detective. And, what I have found in my job is having police powers is very important; not to abuse the powers or anything, but I've been involved in investigations from land use and code where I am interrogating the responsible person, down to murder. We have to go out at night and locate these people...wherever...in these situations we have to find them, and I can't always depend on the other three in our section, they are bogged down with work, to be out with me. And, just coming from the police department, we do have a badge...the prosecutor's have a badge, and we want the authority that comes behind that badge -- we don't want to just flash a badge... And, what are we going to do? We need the rights to make an arrest, should we need to, without being a citizen's arrest. Because of our training, we're very familiar with the laws. And, I've had the occasion also to transport and be with victims that are afraid for their life...because we deal with felony cases...

Rogers: (Continued) and not being able to be armed, and trying to protect a victim...and we can't have the police department...they don't have the men to be there eight hours to protect this witness. We do have a witness protection program, however, nobody is armed... they just set them up in a hotel and it's supposed to be very covertly...transporting them to and from court. Also, there is a lot of convictions and we help to make these convictions by our investigations, and I think...not to my knowledge, but there's a possibility of being threatened in retaliation from our job. And, without having the powers...the public known that we do, we're just like a private investigator -- the prosecutor's office could just hire a private person...on contract. We need to have a little higher respect and authority that goes with the job. We do transport prisoners and that requires you to be armed and have handcuffs issued to you, that kind of stuff. So, it's been on hold...we've voluntarily stopped doing everything because we wanted your backing and support on this matter. However, I do realize that my counterparts on Kauai, the Big Island and Oahu all have powers of police...all have weapons...all have handcuffs, do make arrests if need be when they see a violation of the law. And, we just want your support. That's all I have to say.

Chair Nakasone: Okay, questions from the members? None; thank you. Anyone else that wants to testify? Okay, let's take five, please.

[RECESS/RECONVENE]

Chair Nakasone: Okay, we are reconvened. Mr. Haywood, you're on the agenda.

V. COMMUNICATIONS

- A. Guy Haywood, Corporation Counsel; comments and suggestions on the Charter Commission first draft report and ballot preparation.

Chair Nakasone: Comments on the suggestions...not on the amendments... [LAUGHTER]

Haywood: Thank you, Mr. Chairman. First of all, I wanted to thank you, the Commission, for preparing a report like this...it's always nice to look back and see specifically what the Commission intended. I only have one comment, and I've spoken briefly to the secretary about it...it deals with the ethics section... Section 10-1. In the report it appears that the purpose for including the reference to the boards and commissions in the declaration of policy is to imply that boards and commission members would be covered by the ethics code, and so forth. If you go down in the text, you'll find boards and commissions separated out in some sections and not in other sections. And, if you read Section 10-1, it's really a policy statement...it just says everybody is supposed to be good -- it doesn't really say this section on ethics applies to boards and commissions. So, I would just make that sort of general recommendation...if you would take that into account. Another way to say it is, if you follow the text of that section and the amendments of that section...there are places where boards and commissions aren't specifically mentioned, but I think you intended that they be specifically included. And, I don't think that initial language makes it all that clear, so...

Chair Nakasone: What section is it referring to now?

Haywood: Section 10, on ethics.

Cockett: In the book it's on page 44...the one you're...

Haywood: Yeah, I'm...if you look at page 44 at the top of the page...it says the first amendment relating to Section 10-1 seeks clarification that the code of ethics

Haywood: (Continued) applies to boards and commission members. But, if you read section one, all it does...it doesn't say it applies to them, it just says they're supposed to be ethical. I realize it's a very fine point, but it just struck me. Then, when you get down to the bottom...excuse me, I don't want to say down to the bottom, but at the bottom of page 46...Section 10-4 Prohibitions speaks in terms of no officer or employee of the county shall...and then it lists a whole bunch of things -- one of which was amended to include individuals who are on...well, it talked about compensation and people representing people before the boards. But, the point being that [section] 10-4 doesn't seem to specifically bring down reference to boards and commissions itself. If you look at 10-3.2., it talks about boards and commissions -- so, again there's a question of consistency... It's not a big deal -- it does not appear to be a big deal, but you are talking about the specific prohibitions section of the ethics portion of the Charter; and because if there ever were any question on unethical conduct, you'd want to be sure that this provision was absolutely clear -- it would be construed very strictly, I'm sure. I don't think it's a big deal; I think you can make a very simple reference in Section 10-1 that this section on ethics is intended to apply to all boards and commission members too...some words to that effect... I don't know, I would leave that to Mr. Mancini; but, that's the only substantive comment I have. Have I totally...I could go over this again if everyone's not totally confused... [LAUGHTER]

Chair Nakasone: Well, the question is when you go to 10-4...officer or employee...what is the definition of a member of the board -- isn't he an officer?

Haywood: That's pretty much the idea...the concept we've been relying on in the past, that we've always felt that the members of the boards and commissions were in fact officers or employees of the county, so there was no problem. But, once you start adding them as a distinct group in other parts of the same section, people start saying...well maybe there's a difference here, maybe they intended a difference here. And, that's the main comment, because as I said, there are other Sections...10-3 mentions boards and commissions and then it talks about appointed officers other than employees, et cetera. If this applied to everybody, there would be no need to distinguish them in that case then; it is a very minor point, but again, it's a very important section of the Charter.

Chair Nakasone: Okay; Paul?

Mancini: Guy, I never really understood what the problem was with that because on page 37 of the Charter...the term officer is defined. And, officer includes...under b. Any person appointed as administrative head of any department or as a member of any board or commission. So, it seems to me as long as you defined officer as a member of any board or commission, the provision in the Charter that no officer or employee of the county shall... officer by definition...that includes any member of any board or commission.

Haywood: Yeah.

Mancini: So, when this was brought up as part of the recommendations, I thought by adding it it was going to be redundant -- I didn't think there was anything broken to be fixed. But, it came out of committee that way, so it certainly doesn't hurt to emphasize the fact, and I think it was added for some degree of emphasis. Has anyone made an argument that the code of ethics does not apply to boards and commissions?

Haywood: No; it was just a question of looking at the amended section and seeing that it appeared to be internally inconsistent. I don't think you should add something -- I mean, I'm calling that to your attention; I don't know that it really hurts ultimately, but

Haywood: (Continued) it's a... I think I said at the outset, it is a small point and it is in an important section, so... You're right, Paul; I agree. I don't think you needed to... you would have needed to distinguish that group of people in this amended section, because of that other definition. But, since you did...it creates a...

Chair Nakasone: Any comments about the ballot?

Haywood: About the what?

Chair Nakasone: How we should draft the ballot?

Haywood: The ballots?

Cockett: Drafting of the ballots.

Haywood: Sure, I have lots of comments... [LAUGHTER]

Mancini: What questions to put on it? [LAUGHTER]

Haywood: I'm not sure. You know, if this was a deposition, I'd say could you be more specific...[LAUGHTER]

Chair Nakasone: Can we, for example, draft a ballot in terms of single questions and some questions...some of the amendments are sort of housecleaning also; would there be any difficulty in separating the questions where having one question with the housecleaning amendments...

Haywood: You know, you're asking now...and I don't know the legal implication...I mean, I don't know what the law says specifically in terms of whether you're supposed to have this many questions -- I think it's more a function of what is clear. Whether you group things together or not, I think it's really...the ultimate question is is it something that the public can understand? I don't want to say that the average person can understand; but if you start combining these questions in one, it could be confusing...when in the past we've had individual questions. But on the other hand, in annual Charter reviews there has been on question, as I understand it. I wasn't here for that; I wasn't working in counsel, but as I understand it -- is this an amendment to the Charter or is this a new Charter that you're proposing? I don't know; I mean, that's another question you may want to ask.

Mancini: Amendments.

Haywood: They're amendments? I mean, because the powers...

Mancini: That's the two alternatives.

Haywood: Yeah, you have two alternatives.

Mancini: Propose a new Charter or propose amendments, and no one here has suggested that a new Charter be proposed. And the obligation...the Charter says upon receiving the amendments or a new Charter, this body must give it to the county clerk. The county clerk shall provide for the submission of such amendments or a new Charter to the voters at any general or special election.

Haywood: I really wouldn't know.

Mancini: Mr. Yamamoto there...but, Mr. Yamamoto's legal advisor is yourself...[LAUGHTER]

Haywood: And then...well, I could always make it very quick -- I will defer to Mr. Yamamoto. [LAUGHTER] So long as I can leave the room, I can't be accountable for what he might say. I'm joking actually, Mr. Chairman.

I had a brief discussion with Mr. Yamamoto about this, and the points I made to him was I thought it would be important to insure that the questions were clear to everyone; and, whether you lump things together or not, I don't know -- it's still really a function of is it still clear? I don't think that issues that are procedural should be necessarily given any less clarity than issues that aren't, because they are important issues, I think. I would prefer to have them all at the same status in terms of explanation, but I would also, as I said, defer to the clerk's office and how they would...

Chair Nakasone: So, Paul, you're saying on the basis of the Charter...it identifies a new Charter or amendments...

Mancini: You've got two opportunities or goals...maybe three...two that are stated; you can propose a new Charter or amendments or nothing, I suppose.

Chair Nakasone: So, are you suggesting our review are amendments, so we might have to go with a single question?

Mancini: No; if you were proposing a new Charter...the one question to the voters would be 'should the new Charter be adopted?' Usually when that's done, it's such radical changes to the Charter that you've got a significantly new composition of government. If you wanted to go to a board of supervisors approach, that would be so significant you'd probably propose it as a new Charter. But here we've got...forty-plus proposed amendments at this point in time.

Chair Nakasone: No, so I'm saying if it's not considered as a total revised Charter, that we might be stuck with having individual questions on all the proposed amendments.

Mancini: Yeah, it says you have the option...the county clerk, when he has your report, has the obligation to then bring those proposed amendments to the voters at that point in time. Now, what has happened in the past is that the Charter Commission submits its report to the county clerk...at times, the Charter Commission has also proposed the ballot as part of its report. The county clerk then goes to the attorney general's office or lieutenant governor's office, who he works under technically, and to the corporation counsel and basically gets their input in proposing the final ballot. My discussions with Daryl is that usually when he has proposed a ballot coming from the Commission, he just passes it on to corp counsel to see if they have any problems with it. But technically, it is his jurisdiction...the Charter.

Chair Nakasone: Okay; any questions for Guy?

Takabuki: Guy, can I ask you then to clarify again...are you saying that we cannot group certain things together, or that we can as long as they're clear and they reflect the substance?

Haywood: Well, ultimately I think you could probably do whatever you want; it's a question of how it's perceived by the... The question people are going to have is is it clear period. That's the ultimate question. I can't say that you have to have individual

Haywood: (Continued) questions; I said no. But, just because an item...it merely relates to procedural...whatever that means...or is housekeeping, I don't think that that means you don't have to explain that issue to the voters. How you explain it...whether it's all one question...I don't want to say up to you, but it's... From my side again, not being the final say, I would look to see -- is each specific change understandable period.

Mancini: Just giving two sets of examples -- one would probably work and the other probably wouldn't work -- you could pose a question, I think, saying should the Charter relative to the prosecuting attorney and corp counsel's office be amended to delete the requirement that the corp counsel and prosecuting attorney must practice within the state of Hawaii for three years and provide police powers to the investigators in the prosecuting attorney's office. Fairly...three questions in one, but somewhat of the same subject matter...but three questions. The voters don't have the opportunity to vote on three questions...they have an opportunity to vote on one question. You know, it's questionable but probably it would pass muster on...probably. As opposed to -- should the changes to the fiscal powers of the County of Maui...the finance director and the council...be changed. They don't know what they're voting on -- you've got about seven or eight of those -- there's no idea what somebody's voting on in that situation.

Takabuki: Well then, should a new Charter be adopted -- do they know what they're voting on? That's the ultimate general question.

Mancini: Yeah, that's the problem with when the new Charter is...you've got a significant obligation with regard to public awareness on that.

Chair Nakasone: Okay, thank you, Guy. Daryl?

- B. Daryl Yamamoto, County Clerk, comments and suggestions on recall and initiative, ballot preparation and wording.

Yamamoto: I think the Commission had some questions for me; I did have one comment -- I don't have my Charter with me [LAUGHTER].

Yonenaka: You showed up Charterless?

Yamamoto: It's under the initiative section...where is it...Section 11-6, paragraph 3...and basically, what that provides for is the withdrawal of the petition prior to the thirtieth day preceeding the scheduled...the day scheduled for vote of the county by filing with the County Clerk a request for withdrawal signed by atleast eighty percent of the petitioner's committee. In my initial review and my comments to the Commission, I did not really catch this -- until it was brought to my attention -- but the state law already provides that if the lieutenant governor or the state contract for the ballots statewide...then all questions must be submitted to the office of the lieutenant governor no later than sixty days before the election. And, one definite problem we'd have is if it is done...if the petitioners withdraw it say the thirty-first day before the election, the ballots would already have been printed and mailed out for the overseas absentee voters... we try to abide by the federal guideline of mailing the ballots out by thirty-five days before the election. So, we have that problem of ballots being sent out; and also, if the ballots have already been printed, then we're going to be required to post notices at the polling places informing the voters that the question is no longer...the question should no longer be voted on. So, if at all possible, I would like to recommend that that be changed to sixty days...prior to the sixtieth day...and that would make it consistent with state law.

Mancini: You realize that's in the existing Charter? The thirty days?

Yamamoto: Yeah, I'm recommending a sixty...

Mancini: Okay.

Takabuki: The other one was on the fifteen day...the withdrawal of signatures...fifteen days after the...

Yamamoto: I requested that that be included...withdrawal?

Takabuki: Right.

Yamamoto: Right. And, is that being proposed?

Takabuki: Well, I think there was just a question about when that started to run...I think, Paul, you brought that up.

Mancini: Yeah, 11-4...

Yamamoto: What was the question?

Mancini: You wanted the opportunity to have people to withdraw the petitions within fifteen days after they filed, correct?

Yamamoto: Right.

Mancini: Again then, the question...

Yamamoto: Why not twenty?

Mancini: That's the sufficiency...within twenty days after...the county clerk shall determine sufficiency...and you wanted after the sufficiency, they had fifteen days to withdraw?

Yamamoto: No...within fifteen days of when the petition is filed. Because in that twenty days after...within the twenty days after the petition is filed we're verifying whether or not they have sufficient signatures, but also within that fifteen day period to allow people to withdraw their signature from the petition as part of this verification process. And, this is some, I guess, controversy that's happening on Oahu now with that Leewai Doo recall petition.

Dodson: What does their Charter say?

Yamamoto: I talked to the city clerk and actually I thought theirs contained a withdrawal provision, but he said it's silent; but the reason that they went ahead and processed the withdrawals was it was based on precedence...something that happened in the past, and they felt confident...that they did it legally...on advice from their corporation counsel. But, I felt it was a reasonable provision...just to provide the signatories the opportunity to withdraw if they sign the petition with the wrong impression or with the wrong idea of what the petition was.

Dodson: But let's say, like how much time do they have...let's say if for some reason somebody gets out there and gets 10,000 signatures and all these people are intending to

Dodson: (Continued) withdraw right after it's filed -- do they have ample time to go get 10,000 more after that? Especially if it's some sort of...you know...attempt to...

Yamamoto: You mean for the petitioners...for them to go out and get an additional 10,000 signatures?

Dodson: Let's say for some reason they go out and get 10,000 people to sign this petition...with the intent all along to withdraw their names after the certification starts; and, they withdraw their names...does the preparer of the petition have another opportunity to go get 10,000 more or whatever?

Yamamoto: They would have...there's an expiration period...I'm supposed to notify them within...I've got to take a look at this again...

Takabuki: It seems to me there's a period that you can get supplementary petitions, so they have twenty days after the county clerk says it's insufficient...so, it's not a long period of time, but they do have an additional period.

Dodson: Like this thing that's going on over in Honolulu...the people that are behind this move to get him ousted...now they have to go back and get a bunch more signatures because they have lost so many...because they misunderstood or whatever. Let's say that their intent was not misunderstanding but to get them to think they had enough signatures... get it all prepared, get it all...they think they're well on their way...all within the time limits...and then all these people pull out, and all of a sudden they've passed all the time limits, and they...

Yonenaka: Well, it says here they've got twenty days...after they get notification that it's insufficient.

Dodson: Is that enough time?

Yamamoto: I think in Oahu's case, I'm...and right now, I believe the lawsuit is against the action of the county clerk withdrawing the names from the petition, and therefore finding the petition insufficient; I don't think the petitioners are going to be given the additional time to get names to qualify. I'm not sure.

Dodson: See, that's what I mean here...if we put it in the Charter where you are authorized to take these people off the petition because they want their names withdrawn, especially if there's some sort of collusion or intent...

Yamamoto: I guess you could look at it that way, and you could also look at it...maybe the petitioners intentionally misrepresenting what the petition is about.

Dodson: But then they will have an opportunity to vote on it on the ballot, right? And, if it was misrepresented, they will be able to down vote it on the ballot. If it never gets on the ballot, then it's never going to be voted on.

Yamamoto: Well, I guess I question whether or not...if I personally sign a petition, and if I was presented...or it was misrepresented what the petition was about, and then I later found out what it actually meant...then I should have the right to withdraw my name from the petition, because I don't necessarily want to support something if I don't believe it's correct.

Dodson: I understand that, but you ultimately have that decision by not voting on

Dodson: (Continued) it once it's on the ballot.

Yamamoto: Except for the fact that my name is on the petition as indicating that I'm supposedly in support of that petition or that position, or whatever it is.

Dodson: I'm just afraid that the poor guy who...working so hard to get this petition and goes out and gets all these signatures, and then finds out that half of them are signed up only because they're going to withdraw right afterwards...so his petition's no good because he doesn't have the required amount of signatures.

Mancini: Right now, someone can withdraw their signature anytime, correct?

Yamamoto: From a petition. There's actually no provision in our Charter for withdrawal. And, when I took a look at some of the other charters, I felt that maybe that should be included in ours.

Mancini: It was in other charters?

Yamamoto: Yeah.

Mancini: So, it was put in there and we need to find the ability to put a time limit around it. And, the way it's worded now in the proposal we had it to say if an individual who had signed the petition wishes to withdraw his or her signature from the petition, written notice of withdrawal must be filed with the clerk of the county within fifteen days after the filing of the affidavit...

Wright: We had made a note that maybe that needed to be changed to petition...

Yamamoto: Oh, yeah; it shouldn't be the affidavit.

Wright: I have a note here where we discussed it...changing that to petition...from affidavit.

Mancini: I think that was the question we had...did it relate to the affidavit or did it relate to the petition.

Yamamoto: No, that should be the petition not the affidavit.

Mancini: So, it would be the petition in 11-3, rather than the affidavit in 11-2?

Takabuki: Yes.

Yamamoto: Right.

Mancini: I think that was the question on that one. The filing of the petition is in 11-4...

Yamamoto: I have to apologize...I don't have my original comments when I recommended some changes; and, I know I recommended deletion of that 11-4.1...in requiring that the petition be filed within thirty days...

Mancini: That's going back into our question...you've got the petition, then you've got the filing of the petition, and you've got the certification of the petition; when does the fifteen days start to run -- when it is filed or when it is certified by the clerk?

Yamamoto: When it is filed.

Mancini: When it is filed.

Yamamoto: When it is filed, that was my intent, yeah.

Wright: You're probably right; you should put it under 4.

Yamamoto: Yeah, 11-4.

Mancini: Do you think there's any inconsistencies that the five man committee can withdraw thirty days or sixty days before somebody has only fifteen days to withdraw their signature? The withdrawal of the petition is greatly liberal...even if you move thirty to sixty days...

Yamamoto: They can withdraw anytime up to the sixtieth day.

Mancini: It seems like maybe ninety days might be a better time...if you've got to get your material to the...

Yamamoto: Well, I'll go along with more than sixty -- anything more than thirty.
[LAUGHTER]

Mancini: In your costs...they're already set at sixty days...you've already spent the money at sixty days -- you've probably already spent it at ninety days.

Yamamoto: I was just trying to put forth a conservative suggestion. [LAUGHTER] No, the more time that's allowed, the better for us naturally.

Chair Nakasone: Okay, where are we at now? [LAUGHTER]

Mancini: My point was that even the sixty days, I don't think, quite does the trick; if Daryl has to have his ballot in for initiative to the lieutenant governor's office sixty days...

Yamamoto: Prior to that.

Mancini: Before the election, that means he's spent his money sometime before that, so there's still an inconvenience and a cost factor, even though it doesn't have to go on the ballot -- because the lieutenant governor's office starts to print sixty days... So, a longer time might be more reasonable.

Chair Nakasone: Like you say, ninety days?

Yamamoto: Thank you. [LAUGHTER]

Chair Nakasone: Any questions on that? Any objections? Do we need a motion?

Dodson: No, we're not doing any voting until next week.

Chair Nakasone: Well, just an initial move again, huh? Well, we don't need it; we'll take action next week. Okay, anything else, Daryl?

Yamamoto: Well, I submitted copies of the facsimile ballots for the 1988 Charter

Yamamoto: (Continued) amendment...so what you have would be two ballots labelled D and D2, and again, those are nine questions that appeared on the general election ballot... and ballots D and D2 were actually the third and fourth ballot for each voter. The A ballot is what we call a candidates ballot; ballot B would be your board of education ballot; ballot C would be your constitutional amendment questions... And, I'd just like to express some concern because of the fact that the complaints that we had from 1988 from the voters were that, you know, it just took too long, and that's why we had so many blank votes on the Charter amendment questions. Because for regular voters, you're looking at them having five ballots to vote on; and, for OHA voters, six ballots.

Chair Nakasone: Is there a time limit for a voter to stay in the booth?

Yamamoto: It's supposed to be something like five minutes, and if they are not...if they go beyond that, we're supposed to check on them...

Chair Nakasone: But you cannot tell them to get out, right?

Yamamoto: It's difficult; we haven't had that problem, but people...it's not so much the time that...part of it is the time that they spend trying to vote on their ballots, but the other problem is how much time they spend in line waiting to get to the voting booth...because the voters before them are taking a long time, too.

Chair Nakasone: Well, just a thought...that if they don't have a specific time, you know, somebody can use the strategy and just set up all those voting polls...and take two hours to vote.

Yamamoto: No, there is a time limit...I just can't remember what the time limit is offhand; but, we haven't had that problem.

Dodson: If it gets too long, they just skip them.

Chair Nakasone: Okay, any question on the ballot? Everybody has their sample ballot?

Mancini: Daryl, these were proposals by the council?

Yamamoto: Yes.

Chair Nakasone: No, not all, huh? I guess so, yeah.

Yamamoto: All of them came through the council; I'm not sure if there might have been any initiated by the administration that were included in this, but even those initiated by the administration would still need to go through the council. And, since the council adopts it by resolution, in the resolution they direct me to prepare the questions. So, what I'd normally do is draft the questions and send it upstairs to corporation counsel's office to have them reviewed.

Yonenaka: Oh, you draft the questions?

Yamamoto: Only because I'm directed to. [LAUGHTER] Of course, the question that was posed on the ballot in 1982 was a very simple question -- do you adopt the new Charter of the County of Maui? Something real simple; it was a simple question.

Chair Nakasone: But prior to that, 1976 they did separate...although it was a revised Charter...

Yamamoto: I'm not sure; were you there? I don't remember back that far. [LAUGHTER]

Chair Nakasone: In terms of the mayor's term -- four years and a limited term; they separated that question from the council's term, you know, so although it was a totally revised Charter, they did separate the question -- it wasn't just one question...to accept the revised Charter...yes or no. If I recall correctly, you know, they separated the question of the council and the mayor...especially the terms.

Yamamoto: Was there an overall question in addition to these separate questions, or...

Chair Nakasone: Yeah, I think it was...the rest of that was just one question. But, the question on the council and mayor was two separate questions.

Yamamoto: Because, in '76 the Charter was revised.

Chair Nakasone: Yeah, and that was approved also.

Yamamoto: Right.

Chair Nakasone: That was a setup for the mayor...because it separated the council question from a four year term. But the mayor was four year automatic...it wasn't a question of two or four...it was just four. And the other question was the council -- two or four. Okay, any more questions for Daryl?

Yamamoto: This is my last appearance. [LAUGHTER]

Mancini: Before Daryl leaves...I did do some revisions on the report, and I gave Daryl a copy of the revisions having to do with composition of the council...based upon precincts that he identified last time. And, Daryl said that they are practically perfect.

Yamamoto: It was perfect. But, if there's any discrepancies, it's Paul's fault.
[LAUGHTER]

Mancini: Maybe Daryl didn't read this. [LAUGHTER]

Chair Nakasone: You did check it out?

Yamamoto: Yes.

Chair Nakasone: Okay, no problem with that?

Yamamoto: You're asking me a policy question? Or opinion? [LAUGHTER]

Chair Nakasone: Was it accurate?

Yamamoto: Yes, it's accurate.

Chair Nakasone: Policy we'll decide later. [LAUGHTER] So, Paul, this 92-61...is that the one you're referring to?

Mancini: Yeah, what I did was I took Daryl's precincts identification...which he explained last time to us, and I modified all of the first section of the report, and I included the rewording based upon this. I'll walk through the changes on this in a second, but Larry's here and I think maybe he wants to testify.

Chair Nakasone: Okay.

[PUBLIC TESTIMONY CONTINUED]

G. Larry Butrick, Prosecuting Attorney

Butrick: Hello. I'm glad to see that not only I am still working late tonight. [LAUGHTER] For the record, Larry Butrick, prosecuting attorney, County of Maui. Sorry to appear like this...I wasn't aware that I'd be up here, but I understand there might be a question as to our request to extend police powers to our investigators.

Chair Nakasone: Well, it was brought to our attention that there is a HRS provision...

Butrick: Right. That's what initiated the problem that we have, and specifically, we're referring to the county power that I would have to appoint an investigator is in 62-78 Appointment of Investigators, which allows the county prosecutor to appoint investigators that have the powers and privileges of a police officer of the county. Unfortunately, what occurred is in 1988 that section was repealed, so there is no longer a statutory authority for me to do it. Now, I understand there might have been some concern that... well can't the attorney general do it; and for that, we would logically turn to their authorities in sections 28-11. There again, that states that the attorney general can appoint and commission an investigator as the exigencies of public service may require. That's on an emergency situation...if there's a special prosecution that's required, he does have the power to appoint someone; just like he could appoint me as an attorney general status to conduct an investigation for a case...they do have that power to do so. But again, that is an emergency situation; it's not a quick-fix to remedy a statutory problem. I initially went to the attorney general when I became aware of this problem, and his comment was that well, we can help you out if we have to temporarily, but the real key to it is get your Charter amended like Honolulu did. Now, when this was repealed in '88, the Honolulu prosecutor's office...which was much more on the ball...and they went in and got a Charter amendment to allow their investigator's to have police powers.

Chair Nakasone: Do you have some history of why this provision was repealed? Was it because of the prosecutor's office?

Butrick: Well, I used to work in the Honolulu prosecutor's office, and I know their investigative units are a pretty wild bunch...I could only try to guess... I know that one of their investigators was successfully prosecuted by Mr. Cardoza -- that might be a factor. I really can't tell you honestly why...but that may have been at the root of it; I simply don't know.

Chair Nakasone: Well, we had a comment from the...

Butrick: Mr. Cardoza was appointed as a special prosecutor with Mr. Caronsen; if you remember, about that time period, this was where he was in a Korean bar on Keeamoku Street, and the patron came in and they got in a big fight and he was charged with assault -- this is the chief investigator for Mr. Marsland -- Joe did prosecute that case.

Chair Nakasone: I don't know if you received a copy from the chief of police...a comment on this question of the proposed amendment -- and he made reference to having some problems in Honolulu in regards to the police department and prosecutor's office. But, the only thing he identified as different was in terms of the size of the departments of the police and prosecutor's office compared to the ones in Honolulu. So, you know, the real question is...I don't think it's a question of numbers, but I think the question of the

Chair Nakasone: (Continued) working relationship between the two departments.

Butrick: You hit the nail on the head; as you've seen, I think it's become very obvious in the papers...the Honolulu prosecutor's office is very aggressive in conducting its own investigations. The Honolulu prosecutor's office has always had a reputation for not having a very good relationship with the police department; I think that's historical. Every prosecutor they've had...and, like I said, I know Keith...I've worked for Charles Marsland when I first came over, and the kind of...well, we were very proud of that reputation that we're independent...we do what we think is right; the heck with everybody else. That's unfortunate, and I don't see that situation developing here. I think more so, our request for the police powers...when I initially made it, number one...my investigators function in a police capacity. They are the individuals that have to do last minute service of warrants; they have to find missing witnesses; they have to go corral, and in some cases arrest witnesses that are material witnesses that refuse to cooperate with us; they have to pick up the case where the police leave off. Now, I have sent my investigators to Haiku in the middle of the night, in back boonie roads, to try to find evidence for us, to try to talk to witnesses...not knowing what was going to meet them when they got there. It's a very dangerous situation. Our investigators also participate on extraditions, where they go to the mainland and they bring back prisoners in custody; our people do operate in the capacity of police officers. What I have done when I became aware of this -- I put a standing order out there that they can no longer carry weapons, which has meant the capacity I used to use them in, I do not now. It handicaps me quite a bit; but I refuse to send these people into a dangerous situation if they cannot protect themselves. That's a real motivation there, and I think also from a county standpoint, it's something we owe them. If they are performing police functions, they should have the protections that the police would have in a similar capacity; and, that's been the big motivation.

Chair Nakasone: One question -- do you think that the difference in terms of relationship between your office and the police department -- compared to the other counties which are elected prosecutors...do you feel that there would be a better working relationship, rather than the risk of having...like an elected prosecutor...having his own witchhunt... or so-called witchhunt?

Butrick: I certainly don't have the agenda they do; that's one thing I can tell you right now. I think so; I think also from the fact that we're a smaller community, we're a closer community. The Big Island, Kauai, Maui...we do not have those sort of problems; we're not out doing a lot of independent work. Number one, our size precludes it; we do not have the resources or manpower to take on an MTL investigation by ourselves -- we cannot do that -- we don't do that. We're not set up for that type of operation, and I don't think the outer islands will ever be set up for that kind of operation.

Chair Nakasone: Okay, any questions? Paul?

Mancini: There seems to be two issues; one is your ability to appoint, as opposed to the police powers...once that 1.62.78 was repealed, there's no authority for you to appoint investigators, and you've been doing that because you've gotten an appropriation; and since you've got an appropriation, you've got a job description from personnel services you've been going on. Second is the police powers component; you really need both at this point.

Butrick: Ours is a little different; it's not like a purely appointed position. My attorneys are appointed; I can pretty much make the call on my attorneys when they come in. On my investigators, I have to go through Civil Service; they have to take the test; I have

Butrick: (Continued) to get my list up; and I have to select off of those lists. Unless I do an internal transfer, which we are allowed to do within the county; so that is a little misleading when it says appoint. I can hire.

Mancini: I'm trying to think what the Charter should indicate then, because the Charter states that you can appoint; there's certainly an implication that it may be an exempt position. And, that's not your intent...to make it exempt.

Butrick: No, not to make it exempt; no, I think that the civil service process is fine -- it works fine. If we're going to tap law enforcement background, we have that ability through civil service. The real key thing that we need is simply the language that these folks will have police powers.

Mancini: The language that we're proposing to put in the Charter is merely investigators within the department of prosecuting attorney shall have the powers and privileges of a police officer. That language doesn't deal with the repeal of 62-78; should it?

Butrick: At this point, I don't think it needs to be an appointed position -- at this point, because really, to be quite honest...most of the areas I'm going to recruit from are going to be law enforcement in the Maui Police Department. And, a lot of these people are within the civil service-type of structure already. And, a lot of people...the civil service process is very attractive; and, that's going to help us recruit good, talented people...where if it's an appointment, their job lasts as long as my job does. And, investigators are a classification where the longevity becomes critical; that's what's so tough on recruitment, that's why we turn quite often to the police department. I need people that know the community and know their way around, that have been here for a while. And, for me to offer a job to someone saying that I can only promise you as long as I'm here...would be, I think, detrimental.

Mancini: The genesis, if my recollection is correct, is that investigators in the prosecuting attorney's office started by assignments from the police department.

Butrick: I'm sorry, would you...

Mancini: By assignments...I think it started with Roy [sic] Horner...wasn't it Luther and Horner...weren't they the two that started this? And, they were police officers and they were merely assigned by the police department, still under the jurisdiction of the chief, which I think was probably Joe Cravalho...or was it San Diego at the time?

HueSing: I don't believe so.

Mancini: You believe they were hired by the prosecuting attorney's office?

HueSing: Yes, I believe that when they were assigned to the prosecuting attorney's office, they were delegated their responsibilities by the prosecutor.

Butrick: Yeah, that would be a very difficult situation, because the poor guy couldn't answer to two bosses. What we do now if we have special investigations, like a major white collar or we're going to have some murder cases coming up, and we need to work quite closely with the officers involved...what we will do is get them on a special assignment -- we can request a special temporary assignment to the prosecutor's office, and they will work with us putting the case together; but it's not a permanent...it's not a permanent situation...it's up here for a week or two to work with us and that's it.

Mancini: Steve Scott did that for a while; wasn't Steve Scott...I thought he was in the police department, but they assigned him to the prosecutor's...

HueSing: Yeah, I believe he was assigned to the police department from the prosecuting attorney's office -- he was the deputy prosecutor.

Mancini: Oh, vice versa.

Butrick: That's right, Scott was the deputy prosecutor...I remember the name, yeah. Much like I have John Kim in the capacity now -- he's my deputy in the police department, but he works for me -- he'd better. [LAUGHTER]

Chair Nakasone: Any further questions? Anne?

Takabuki: Larry, last time you came before us, I thought you mentioned that one of the neighbor islands handled this issue by an ordinance; was that correct?

Butrick: I believe Kauai is trying to do that; I have to double check on it. Last time I checked in with John Ono on the Big Island...it was still in limbo; he didn't know for sure which way to go. I talked to Ryan Jimenez, and at that point, I believe he indicated they were going to try to approach it from an ordinance standpoint. When I talked to Warren Price, he said the best way to go was a Charter amendment, just like Honolulu did -- he said that's really the best way to go.

Mancini: One further question...I noticed that under the attorney general's statutory provision, the investigators have the powers and privileges of a police officer or of a deputy sheriff. Why deputy sheriff?

Butrick: I think because they would be...if you are working with the AG, you're really the only state police force we have. See, we don't have a state police force here; and, that might possibly be a reason...again, I'm guessing, but I think that would be a logical jump...that they can operate like a state law enforcement officer.

Chair Nakasone: Any further questions? Okay, thank you very much for that information. Okay, Paul, it's your show.

C. Paul Mancini, Charter Commission Counsel.

Mancini: It will be a quick show...I don't want to miss the Olympics. [LAUGHTER] What I did was I revised a portion of the Charter report providing a number of changes we had discussed. Some editorial...a few substantive; an example of the substantive was I took Daryl's precinct indentifications for the council's composition -- that's substantive. With regard to the salary commission, I made a Chapter 16 -- you recall we wanted that misplaced...taken out of the council...so that is somewhat substantive and somewhat cosmetic. At the last meeting, if you recall, we discussed the fact that there's no requirement in the Charter that members of boards and commissions must reside on the island on the commission on which they serve, so I made that substantive change.

Wright: Where does that come? Is that in the same section of chapter 16?

Mancini: Yeah, I just changed the language. If you recall, we talked about the corporation counsel...if we are going to delete the requirement in prosecuting attorney... that we wanted a reciprocal change in corp counsel's, so I made that reciprocal change to corp counsel. If you recall, we had left out a sentence...or I had left out a sentence

Mancini: (Continued) in the board of variance and appeals in public hearings...I put that sentence back in -- that's somewhat substantive. The change with regard to the requirement that commission members reside in the islands...it's on page 27...in Section 8-8.4. I didn't touch the board of water supply...

Wright: That's good.

Mancini: There were a couple of typos in the fiscal section so I changed those. I gave two alternative provisions on the executive budget -- if you recall, the Charter does...now does not recognize an operating budget into two components...executive and operating...so I changed the section in there to show that when the mayor submits the operating budget, it'll include an executive and a legislative. And then, I included an alternative provision...the provision that we've added with...it's on page 40...the mayor and the council may initiate changes to their respective operating budgets...I gave alternative language which is probably no better, and probably isn't as good, where I defined once the budget is passed the mayor may initiate changes to the executive operating budget but not to the legislative and vice versa. After I did it, I don't really think it's an improvement, but you can look at it. And, that's about it for the changes; I didn't change any of the last section...after this talk with Daryl today, I'll do that for the next meeting. So, I'll submit you the changes to the next section...on Monday, I guess.

Wright: Yeah, is there any chance on that first one...on council composition...that we could see your changes before Monday?

Mancini: You have them.

Wright: We already have the changes? Where? It's in here someplace in the new stuff?

Fabrao: It's in here...

Cockett: The newest one...

Wright: It's in the newest one that you gave us before?

Mancini: Just today.

Wright: Today? I don't think I got it today.

Cockett: Yeah, this new one that we just got today. Oh, you didn't have enough copies...you didn't get one, that's right.

Mancini: I'll get one delivered to your office tomorrow then.

Wright: Okay, thanks; no wonder I didn't have it...I couldn't figure out why I didn't...

Cockett: He ran out, that's right.

Wright: That's okay, I just wanted to be able to read the changes.

Mancini: Okay, that's it; I just wanted to be able to get a head start on all the

Mancini: (Continued) changes so that whatever you do on Monday, I'd be somewhat prepared.

Chair Nakasone: So, Paul, in terms of the ballot...as far as the layout of the ballot, do you have any ideas?

Mancini: I have a couple of suggestions; I suggest that after you vote on Monday, that you appoint a ballot committee..[LAUGHTER].made up of a few people, and that ballot would be... First, you've got to see what you want to put on the ballot before you really want to start working on the ballot, because to start to look at forty changes to go on there... And, that you are going to have to approve a final report by the fifteenth...

Chair Nakasone: We have to submit by the fifteenth.

Mancini: Submit by the fifteenth...Monday is what, the third?

[Staff: I put down on your agenda for next week...just tentatively the 6th; I didn't know, I just chose a date...you said you're leaving on the 10th, right?]

Mancini: I'm leaving on the 10th...

Wright: She's trying to have us meet the 3rd and the 6th next week.

Mancini: Oh, I didn't know that...hopefully, when you make the change...whatever you decide upon Monday, I'll be fairly well prepared to finalize the report and get it to you. It depends on what happens, but I've got everything obviously in a word processor, so it's probably not going to be a problem. The problem is going to be to decide how to frame the questions, because that's going to be rather time consuming; and, you've got two ways to do that, of course, you can try to get it done immediately with a committee, or what you could do is submit your report...because your report is due with the changes...but the ballot I don't believe is due, so you could use the time after that to develop a ballot committee which would be part of...if you're going to stay in existence...a PR committee. Because normally, the Charter Commission doesn't say aloha after it submits its report; it develops a program to sell its program, and therefore you could implement your ballot...

Chair Nakasone: So, we can guide Daryl in terms of how we want the questions to be on the ballot?

Mancini: It's only a matter of persuasion. [LAUGHTER]

Wright: Well, do you think we should check with Daryl to see...if we turn in our report by the 15th, is he still going to be open to us framing some questions and presenting them to him? You know, if we try to present a form ballot after that time?

Mancini: If you didn't, he would either do it himself or send it to corp counsel, and corp counsel would do it.

Chair Nakasone: Okay, so I'm sure we will be able to work with him in terms of the layout of the ballot questions.

Mancini: That's the more practical alternative; what I'll do is I'll talk to Daryl before the next meeting and I'll give you a report on that. Because to try to prepare the ballot by the 15th...it may not be the ballot you want.

Chair Nakasone: But, the real question, Paul, is...I know that the Commission itself takes action on all the proposed amendments and submits that to the clerk, but from that point on...I guess it's going to be...the members would have to rely on a committee to work with the clerk...because I don't think we can take any action if they decide this is not the way, huh? Or, the Commission decides this is not the way it should be questioned.

Wright: That's what I was going to ask, because I don't know how far our authority extends after the 15th -- do we have anything or we can actually vote on anything...I think our authority is ended and we can try and work to get the ballot in a form, but I'm not sure we could...I don't know if we still have authority to approve or disapprove of anything after the 15th, to tell you the truth...because I thought that's when our technical work...our Commission ends, and as a result, I'm not sure we have anything that we can vote on after that time period. We can certainly work on it, I mean, but that would be more voluntary...

Mancini: You've got a point, but again I think we start with the assumption...if that's the correct word...that the ballot is the jurisdiction of the county clerk, so no matter what you do it's going to be an element of being persuasive to him, also making life easy for him, because I think he would much prefer if somebody gives him the ballot than him looking at doing it himself. But, the primary question to look at by next Monday is...assuming the ballot's going to be one form or another...how many questions do you want to put up there...keeping in mind what Daryl said about the complaint he had when they merely put nine questions on it. To read the nine questions, it took a long time.

Fabrao: I think an important component of people voting...even if we had forty questions...if we wanted to put all of them on the ballot...then we have to educate the public as much as we could...but, I mean you know, I think it's important criteria. It's kind of hard to get them educated...

Mancini: What we might do...and maybe we'll do it by next session...maybe we'll get a copy of all the previous ballots and take a look at all of them...going back to when the new Charter was proposed and then those last amendments...

Wright: On Monday we may have to do as Paul's saying...some of that prioritizing; I mean, I went through and circled ones I thought...depending upon whether they pass or not...would be things that would be of some substance for the voters to decide. And then the others, I don't know if there is some logical way to group them maybe into three questions, or something...even if it's lengthy...we're almost going to have to do it, because I really don't think that the forty questions...they won't bother to answer. Some of them we could say...do you agree to clarify the Maui County Charter to reflect the following and then a list that are sort of unimportant ones, so to speak. But, I don't know of any other way to do that, but we're going to have to just prioritize like Paul told us.

Chair Nakasone: Okay, any further comments? Questions?

VI. NEXT MEETING DATE
Monday, August 3, 1992 at 3:00 p.m. - final vote.

VII. ADJOURNMENT
There being no further business, the meeting was adjourned at 6:07 p.m.

ACCEPTED:

Robert Nakasone, Chairman Date