

ALAN M. ARAKAWA
Mayor

PATRICK K. WONG
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX 270-7152

October 3, 2011

MEMO TO: Elle Cochran, Chair
Infrastructure Management Committee

F R O M: Michael J. Hopper, Deputy Corporation Counsel

SUBJECT: Electric Vehicle Meter Installation (IM-30)

I am in receipt of your memorandum dated September 16, 2011, attached as Exhibit "A", regarding the above item. Specifically, you asked whether the State must pass enabling legislation before the County can address the loss of gas tax revenue resulting from the increased use of electric vehicles through new taxes or fees.

Article VIII, Section 3 of the Hawaii Constitution states:

"The taxing power shall be reserved to the State, except so much thereof as may be delegated by the legislature to the political subdivisions, and except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions."

It is well established that: "Municipal corporations are solely the creation of the State. As such[,] they may exercise only those powers which have been delegated to them by the State legislature . . . [a]ccordingly, if no provision of the Hawai'i Constitution or the HRS empowers the [county] to enact and enforce [an] ordinance, the ordinance is invalid."¹

¹ State v. Medeiros, 89 Hawai'i 361, 365 973 P.2d 736, 741 (Hawaii 1999) (citing In Re Application of Anamizu, 52 Haw. 550,

Elle Cochran, Chair
Infrastructure Management Committee
October 3, 2011
Page 2

In your memorandum you do not identify any particular proposal to establish new taxes or fees to address the loss of fuel tax revenue resulting from the increased use of electric vehicles. As such, my advice will evaluate the County's authority to levy new taxes generally.

I am not aware of any constitutional or statutory provision at this time that would authorize the County to establish a new tax to address the aforementioned loss of fuel tax revenue. While the State has authorized the County to set and collect certain taxes related to motor vehicles, including fuel² and vehicle weight³ taxes, it has not expressly authorized the County to establish a tax to offset fuel tax loss resulting from the use of electric vehicles.

The Hawaii State Legislature has considered the issue of diminishing fuel tax revenues in its review of Senate Bills 1131 and 819 in 2011. Those bills would require the State Department of Transportation to establish pilot programs for taxing vehicles according to "vehicle miles traveled" rather than the amount of fuel purchased.

The draft bills state, in pertinent part:

As the use of fuel efficient and alternative energy vehicles becomes more prevalent, less gas will be consumed and liquid fuel tax collections will correspondingly diminish. The current method of assessing the motor vehicle liquid fuel tax on a per gallon basis will become less and less effective at generating a stable revenue source to fund the land transportation infrastructure program.⁴

Despite this proposed legislation, it does not appear that the Legislature adopted any Act requiring the establishment of a pilot program or authorizing the Counties to establish a tax based on vehicle miles traveled. Such a tax would, therefore, not be authorized at this time.

553, 481 P.2d 116, 118 (1971)).

²Section 243-1 et. al., Hawaii Revised Statutes.

³Section 249-1 et. al., Hawaii Revised Statutes.

⁴SB 1131, Part II, Section 2(a); SB 819, Section 1.

Elle Cochran, Chair
Infrastructure Management Committee
October 3, 2011
Page 3

As there is no pending proposal currently before your Committee⁵ to address the potential loss of fuel tax revenue due to the increased use of electric vehicles, I have provided a general analysis of the subject area. Should you have a particular proposal in mind, our office could review and comment, if requested.

MJH:ma
Enclosure
cc: David Goode, Public Works Director
S:\ALL\Advisory\MJH\Cochran Memorandum re taxes.wpd

APPROVED FOR TRANSMITTAL:

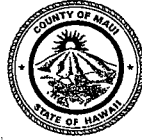

PATRICK K. WONG
Corporation Counsel

⁵ While not directly related to a decrease in fuel tax revenues, the Planning Committee is currently considering the adoption of "traffic impact fees" as item PC-47. Counties are authorized by Sections 46-141 through 46-148, Hawaii Revised Statutes to establish impact fees for developments that require grading or building permits. Impact fees are not taxes, though, and are collected from developments and must be spent on projects that provide a "reasonable benefit to the development." Section 46-144(4).

Council Chair
Danny A. Mateo

Vice-Chair
Joseph Pontanilla

Council Members
Gladys C. Baisa
Robert Carroll
Elle Cochran
Donald G. Couch, Jr.
G. Riki Hokama
Michael P. Victorino
Mike White



Director of Council Services
Ken Fukuoka

COUNTY COUNCIL
COUNTY OF MAUI
200 S. HIGH STREET
WAILUKU, MAUI, HAWAII 96793
www.mauicounty.gov/council

September 16, 2011

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: Elle Cochran, Chair
Infrastructure Management Committee

Handwritten signature of Elle Cochran.

SUBJECT: **ELECTRIC VEHICLE METER INSTALLATION (IM-30)**

RECEIVED
CORPORATION COUNSEL
2011 SEP 19 AM 10:16

At its meeting of September 12, 2011, the Infrastructure Management Committee recommended passage on first reading of the attached proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING SECTION 16.18B.109, MAUI COUNTY CODE, PERTAINING TO ELECTRIC VEHICLE METER INSTALLATION".

At that meeting, the Committee discussed the loss of gas tax revenue that will result as residents shift to alternative energy fueled vehicles such as electric vehicles. May I please request that you advise the Committee whether additional enabling legislation at the State level would be needed to allow the County to address this loss of gas tax revenue through new taxes or fees .

As this matter is anticipated to be considered at the October 7, 2011 Council meeting, may I further request that your response **be received by Wednesday, October 5, 2011.**

To ensure efficient processing, please include the relevant Committee item number in the subject line of your response.

Should you have any questions, please contact me or the Committee staff (Scott Jensen at ext. 7662, or Yvette Bouthillier at ext. 7758).

im:ltr:030acc01:scj

Attachment

cc: Michael Hopper, Deputy Corporation Counsel

EXHIBIT " A "