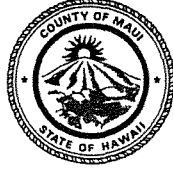


ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
Corporation Counsel

DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7741
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May 29, 2012

MEMORANDUM

T O: G. Riki Hokama, Chair
Policy Committee

F R O M: Edward S. Kushi, Jr.
First Deputy Corporation Counsel

SUBJECT: PROPOSED CHARTER AMENDMENTS (CHARTER COMMISSION'S PROPOSALS) (POL-10(12))



Responding to your request of May 22, 2012 in the order presented:

1. Is it up to the Charter Commission to determine the ballot questions for the Council's alternatives? Please explain.

Yes.

Section 50-10, Hawaii Revised Statutes ("HRS"), entitled **Publication and submission to electors**, in pertinent part, states:

"... The form of ballot shall be prepared for the county clerk by the commission. ... In the event alternatives are included in the ballot, the alternatives, including such explanatory material as may be necessary, shall be submitted in substantially the following form:..." (emphasis added)

G. Riki Hokama, Chair
Policy Committee
May 29, 2012
Page 2

The case of Kimura, et al v. County of Hawaii, et al¹ ("Kimura case"), and the resulting legislative amendments² to Chapter 143A, HRS (Chapter 50's predecessor statute) is perhaps most instructive on the question presented.

In Kimura, the duly constituted Hawaii County Charter Commission submitted a proposed charter to the Board of Supervisors, which, in turn, submitted several proposed alternatives to various sections of the charter as prepared by the commission. The commission rejected five of the board's proposals. Pursuant to Section 143A-9, HRS³, after the commission's submission of the proposed charter with the alternative proposed by the board which were not accepted by the commission, the county clerk prepared the ballot questions, and a special election was duly set, noticed and held on August 13, 1966. Without detailing the arduous discussion by the court, which eventually decided and ruled that no charter was adopted by the special election, the Kimura court commented:

"If it was intended to put before the voters the question whether they would or would not accept whatever form of charter was framed as a result of the balloting on the alternative proposals (assuming without deciding that such a proposition could have been put) more inept language for putting that question could hardly have been found that appears on the ballot..." (Emphasis added)⁴

In conclusion, the Kimura court further commented that:

"This question now has been resolved as to this particular form of ballot. However, other questions may arise. It should be apparent, we think, that the best solution would be legislation supplying the details as to the form of the ballot, manner of voting, and vote

¹ 49 Haw. 336 (1966).

² Act 235, 1967 State Legislature.

³ Predecessor statutory section to Section 50-9, HRS.

⁴ Note 1, at page 346.

required when alternatives are submitted, which are absent from the statute at this time."⁵

Taking the hint from the Kimura court, the 1967 State Legislature passed Act 235, which clarified, revised and generally over-hauled Chapter 143A⁶. Specific to the question of ballot preparation, the legislature stated:

"The purpose of this bill is to clarify and enlarge on the existing provisions of law concerning the adoption of county charters. Special attention is given to prescribing in detail the preparation of the ballot so that voters may choose not only whether to adopt the proposed charter, but also which alternative proposals within the charter shall be adopted.

. . . .

The bill sets out in detail the form of the ballot to be used in submitting the charter to the voters and the form in which alternatives shall be submitted. The ballot is to be designed by the charter commission and not by the county clerk. It would be the duty of the county clerk to prepare the ballots after he has been advised of the form of the ballot by the charter commission.

. . . ⁷ (emphasis added)

Based on the above, we opine that it is the Maui County Charter Commission's ("Commission") duty and responsibility to design, prepare and submit the ballot questions to the County Clerk for charter amendments proposed by the Commission, together with ballot questions for alternative charter amendment proposals submitted by the Council which have been rejected by the Commission.

We further opine, however, that the above conclusion would not apply to instances or situations wherein the Council, on its own initiative, and pursuant to the provisions of Section 14-1(1) of

⁵ Note 1, at page 349.

⁶ Note 3, Id.

⁷ Note 2, SCRep. 620.

G. Riki Hokama, Chair
Policy Committee
May 29, 2012
Page 4

the Maui County Charter, submits separate and independent proposed charter amendments to the County Clerk.

2. May the Council, if it chooses to do so, prepare its own ballot questions for alternatives it submits to the Charter Commission's proposals? If so, what is the time frame for it to submit ballot questions? If the Council prepares ballot questions, may those questions be amended by the Charter Commission prior to submittal of the Council's alternatives to the County Clerk?

Based on the discussion and position stated in our office's memorandum to this committee dated May 22, 2012 (copy attached hereto marked as Exhibit "A"; see responses to questions 2, 3, and 4), pursuant to Section 50-9, HRS, the Council has ten (10) days from the receipt of the Commission's notification of rejected alternative(s) to recall said alternative(s).

We do not believe that proposing a ballot question for a Commission-rejected alternative constitutes a recall of said alternative. Accordingly, the statutory ten (10) day period would not apply, and if no action is taken by the Council within said ten (10) day period, the Commission is then tasked with finalizing its report, including all proposed ballot questions, for submittal to the County Clerk. However, as stated in our May 22, 2012 memorandum, the Commission's deadline for submittal to the County Clerk is July 31, 2012. If the Council is so inclined, the Council may take "action" via a resolution or committee report which proposes ballot questions for Commission-rejected alternatives, and transmit same to the Commission for its consideration⁸, provided the Commission is not time-pressed in meeting its own deadline.

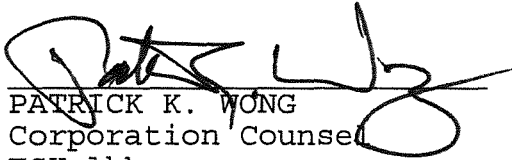
In the alternative, as discussed in our May 22, 2012 memorandum (responses to questions 3 and 4, at page 4), pursuant to Section 14-1(1) of the Charter the Council may act and submit charter amendment proposals, with suggested ballot questions, directly to the County Clerk. In the event such amendment proposals mirror the Commission-rejected alternative proposals, it would then be the duty and responsibility of the County Clerk to

⁸ We note, however, that it would be in the Commission's authority and discretion to accept, reject and/or modify any such proposed ballot questions submitted by the Council.

G. Riki Hokama, Chair
Policy Committee
May 29, 2012
Page 5

assure that the ballot questions are not inconsistent nor produce
an untenable result or situation.

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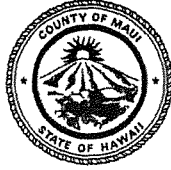


PATRICK K. WONG
Corporation Counsel
ESK:lk

cc: Jeffrey Kuwada, County Clerk
Ken Fukuoka, Director of Council Services

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ALAN M. ARAKAWA
Mayor



PATRICK K. WONG
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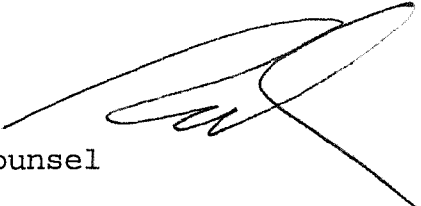
May 22, 2012

MEMORANDUM

T O: G. Riki Hokama, Chair
Policy Committee

F R O M: Edward S. Kushi, Jr.
First Deputy Corporation Counsel

SUBJECT: PROPOSED CHARTER AMENDMENTS (CHARTER COMMISSION'S
PROPOSALS) (POL-10(12))



Responding to your request of May 11, 2012 in the order presented:

1. If the Charter Commission rejects a Council alternative, and the Council takes no affirmative action, what becomes of the rejected alternative once the Charter Commission submits the proposed charter to the County Clerk? Is the rejected alternative placed on the general-election ballot in November in competition with the corresponding Charter Commission proposal? Please explain.

Yes. As expressly set forth in Section 50-9, Hawaii Revised Statutes ("HRS"), "... Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft." (emphasis added)

EXHIBIT " A "

2. What does it mean for the Council to "recall" a rejected alternative? If the Council wants to recall a rejected alternative, what process does it follow? If the Council recalls an alternative through the adoption of a resolution, please transmit a form of a resolution that, if adopted, would constitute a recall of the rejected alternative. If the Council does not recall an alternative through the adoption of a resolution, please transmit the appropriate form of legislation.

In the context of Section 50-9, HRS, "recall" by the Council would be its withdrawal of the alternative that was previously submitted and rejected by the Charter Commission.¹

As to how and by what method the Council would process a recall, similar to the discussion regarding how the Council processed its alternatives to the Commission's initial report as stated in this writer's memorandum dated April 2, 2012 (copy attached hereto and marked as Exhibit "1"; response to question no. 2, at page 2), the Council may propose and adopt a resolution or adopt a committee report specifically stating its recall. However, as a practical/logistical matter, the Council would be hard-pressed to process, complete and adopt either a resolution or committee report within ten(10) days of its receipt of the Commission's notice of rejection.² Notwithstanding the stated ten (10) day time period, Section 50-9, HRS, does not set forth a time deadline within which the Commission is required to submit its final report

¹ By Act 235, 1967 State Legislature, Section 143A-9, HRS (the predecessor to Section 50-9, HRS) was amended to provide for recall.

"Section 143A-9 is amended to allow the Board of Supervisors to recall any of the alternates that are rejected by the Charter Commission. This would give the Board another opportunity to review the necessity of such an alternative." SC Rep. No. 620.

² Section 50-9, HRS, in pertinent part, states:

"...The legislative body of the county may within ten days after receiving such notification recall any or all of the alternative proposals rejected by the commission..."

G. Riki Hokama, Chair
Policy Committee
May 22, 2012
Page 3

to the county clerk.³ The only time deadline imposed on the Commission to submit its report to the county clerk is set forth in Section 14-3 of the Maui County Charter, which is within sixteen (16) months after the commission has been appointed, which deadline for this Commission would be July 31, 2012.⁴

Based on the above, we believe it would reasonable and meet and satisfy the spirit of the law for the Commission to allow the Council enough or additional time to process and adopt any "action" to complete any recall proceedings. Allowing such additional time for the Council to consider a recall, and if a recall is indeed adopted, would in essence, lessen the Commission's responsibilities, in that it would then not process the previously rejected alternative(s) to the County Clerk.

Accordingly, we suggest and advise that if the Council is inclined to recall any of its alternatives rejected by the Commission, the Council send a formal request to the Commission for

³ Section 50-9, HRS, in pertinent part states:

"...Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft."

⁴ Section 14-3 of the Maui Charter, entitled Mandatory Review, in pertinent part, states:

"...The commission may propose amendments to the charter or draft a new charter which shall be submitted to the county clerk within sixteen (16) months after such commission has been appointed..."

The 2011-12 Maui Charter Commission was official appointed as of April 1, 2011.

G. Riki Hokama, Chair
Policy Committee
May 22, 2012
Page 4

more, additional time to process such a recall. However, we further suggest and advise that any request for more, additional time be reasonable, and set a date certain for Council action, to allow and enable the Commission to meet its deadline for submittal to the County Clerk well in advance of July 31, 2012.

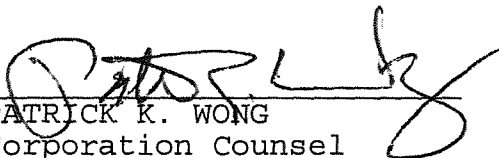
3. Is the Council permitted to modify a rejected alternative and transmit the modified proposal to the County Clerk for placement on the general-election ballot, in competition with the corresponding Charter Commission proposal?

Yes, provided said "modified" proposal is submitted directly to the County Clerk, and not back to the Commission, pursuant to Section 14-1(1) of the Charter.

4. Is the Council permitted to place an alternative proposal on the ballot that has not been considered by the Charter Commission, pursuant to the authority set forth in Section 14-1 of the Charter (i.e., by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council). If so, would that alternative proposal be placed on the general-election ballot, in competition with the corresponding Charter Commission proposal?

Yes. In the event competing proposals are placed on the ballot, and both proposals receive a majority vote, the proposal receiving the higher majority of yes votes would prevail (See copy of memorandum to Roy T. Hiraga, County Clerk, from our office dated October 31, 2002, attached hereto and marked as Exhibit "2").

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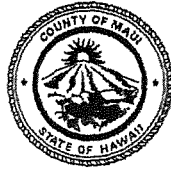

PATRICK K. WONG
Corporation Counsel

ESK:lk
Enclosures

cc: Jeffrey Kuwada, County Clerk
Ken Fukuoka, Director of Council Services

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ALAN M. ARAKAWA
Mayor



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April 2, 2012

MEMO TO: G. Riki Hokama, Chair
Policy Committee

FROM: Edward S. Kushi, Jr.
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to read "Edward S. Kushi, Jr.", is written over the printed name and title.

SUBJECT: PROPOSED CHARTER AMENDMENTS (CHARTER COMMISSION'S PROPOSALS) (POL-10(12))

Responding to your request of March 29, 2012 in the order presented:

1. Does Section 14-1(1) of the revised Charter of the County of Maui (1983), as amended ("Charter"), apply to the procedure by which the Council may propose alternatives to the Charter Commission's proposed amendments, pursuant to Section 50-8, Hawaii Revised Statutes ("HRS"), in addition to amendments proposed by the Council for placement directly on the ballot?

RESPONSE: No, as to any Council-proposed alternatives to the Charter Commission's proposed amendments.

Yes, as to any Council-proposed charter amendments sent directly to the County Clerk for placement directly on the ballot.

2. May the Council propose alternatives to the Charter Commission on its proposed amendments, pursuant to Section 50-8, HRS, through a resolution that is not subject to the two-reading requirement under Section 14-1(1) of the Charter?

RESPONSE: Yes. We believe the two-reading requirement as set forth in Section 14-1(1) applies only to Council-initiated charter amendments that are sent directly to the County Clerk, and not to proposed Council alternatives to Charter Commission amendments.

EXHIBIT " 1 "

G. Riki Hokama, Chair
Policy Committee
April 2, 2012
Page 2

May the Council proposed alternatives to the Charter Commission on its proposed amendments, pursuant to Section 50-8, HRS, through the adoption of recommendations set forth in a committee report or other document?

RESPONSE: Yes, subject to Section 4-1 of the Charter which states:

"Actions of the Council. Every legislative act of the council shall be by ordinance, unless otherwise provided herein. Other acts of the council may be by resolution."

Section 50-8, HRS, merely states, in pertinent part:

"Within thirty days after receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with alternatives to the commission for its study."

Neither Section 50-8 nor 50-9, HRS, sets forth a requirement that the legislative body must transmit its "alternatives" to the Charter Commission via any particular document, be it a duly adopted resolution or otherwise.

Accordingly, we believe that the formal process for the Council to transmit alternatives to the Charter Commission would be through a duly adopted resolution. However, since Sections 50-8 and 50-9, HRS, as well as Section 14-3 of the Charter itself, are silent as to mandating what formal, specific document is required to transmit said alternatives, we believe that if the full Council chose to adopt a committee report instead of, or in lieu of, a duly adopted resolution, and transmit said committee report to the Charter Commission, the requirements of the Charter Commission/legislative body process would be satisfied.

3. Must the County Clerk publish a digest following passage on first reading of a resolution proposing a Charter amendment?

RESPONSE: No. Section 4-2(4) of the Charter, as well as Rule 6(B)(9) of the Rules of the Council, only reference digest publication of ordinances, not resolutions.

If not, is there any minimum number of days which must pass between the "two readings on separate days" requirement under Section 14-1(1) of the Charter?

G. Riki Hokama, Chair
Policy Committee
April 2, 2012
Page 3

RESPONSE: No, subject to "sunshine law" posting requirements of agendas.

4. What constitutes an "alternative" under section 50-8, HRS?

RESPONSE: Unknown. Said HRS section is silent. However, the rule of reason should apply and there should be a relationship between the proposal by the Charter Commission and the alternative being suggested by the Council.

For instance, would a recommendation that a proposal be deleted be considered an alternative?

RESPONSE: Yes.

What about comments in the nature of those made in response to Proposals 6 or 13 in the attached Committee Report 02-58, at pages 5 and 7?

RESPONSE: Yes.

5. Under Section 50-9, HRS, the Charter Commission shall report to the Council any rejection of alternatives presented. The Council then has ten days after receiving notification of such rejection to "recall any or all of the alternative proposals rejected by the commission." Is the recall mechanism for the Council to present directly to the Clerk any alternatives rejected by the Charter Commission?

RESPONSE: Yes.

Would such a recall require the Council to follow the requirements of Section 14-1(1) of the Charter, requiring the passage of a resolution on two readings within the ten-day period? Please explain the process.

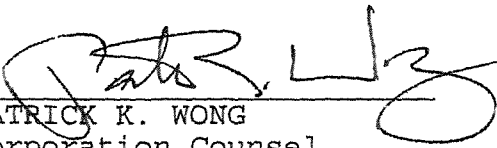
RESPONSE: Yes, but not within the "ten-day period". We believe the "recall" terminology or process is intended to authorize to the Council to act, on its own initiative, on any proposed amendments to the Charter which have been rejected by the Charter Commission. We do not believe the Council is required to complete the "recall" process with any time period, let alone the referenced ten-day period, subject however, to any time deadline

G. Riki Hokama, Chair
Policy Committee
April 2, 2012
Page 4

for transmittal of any proposed charter amendments to the County Clerk.

If further discussion or clarification is needed, we will be present at any future Policy Committee meetings on this matter.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Corporation Counsel

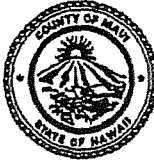
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ESK:lak

cc: Jeffrey Kuwada, County Clerk
Ken Fukuoka, Director of Council Services

Opinion 2002-37

JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

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October 31, 2002

MEMO TO: Roy T. Hiraga, County Clerk
FROM: Brian T. Moto
First Deputy Corporation Counsel *B.T.M.*
SUBJECT: Section 50-10, Hawaii Revised Statutes

Introduction

The purpose of this memorandum is to respond to your memorandum, dated October 8, 2002, to James B. Takayesu, Corporation Counsel, requesting legal advice regarding the interpretation of a portion of Section 50-10, Hawaii Revised Statutes ("HRS").

Issue Presented

Your memorandum observes that a sentence within HRS Section 50-10 states as follows:

If the proposed charter and any of the proposed alternatives receive a majority of the votes cast at the election, the proposition receiving the larger majority shall supersede the proposition with the smaller majority.

You asked for clarification as to whether the phrase, "larger majority", as used in HRS Section 50-10 and as applied to alternative Charter amendment proposals, means: (a) a greater number of "yes" votes; or (b) a higher (i.e., larger) ratio of "yes" to "no" votes.

Short Answer

In summary, we opine that the phrase, "larger majority", as used in HRS Section 50-10 and as applied to alternative Charter amendment proposals, means a greater number of "yes" votes and not a higher ratio of "yes" to "no" votes.

EXHIBIT " 2 "

Roy T. Hiraga, County Clerk
October 31, 2002
Page 2

Analysis and Discussion

As discussed earlier, and as discussed in a letter, dated August 3, 2001, from the Department of the Corporation Counsel to Attorney General Earl Anzai, we are of the opinion that Chapter 50, Hawaii Revised Statutes ("HRS"), constitutes the enabling statutory law on county charter commissions and continues to be valid and applicable to the operation and procedures of county charter commissions and to the submission of charter amendments.¹

HRS Section 50-10 states, in pertinent part, as follows:

Each elector may vote for the proposed charter and for any proposed alternative. Blank ballots and spoiled ballots shall not be counted in determining the majority of the votes. Any proposition receiving a majority of the votes cast at the charter election shall be considered approved by the electors. If the proposed charter and any of the proposed alternatives receive a majority of the votes cast at the election, the proposition receiving the larger majority shall supersede the proposition with the smaller majority.

HRS Section 50-11 states as follows:

Every charter established under this chapter shall provide means by which the charter may be amended or revised. The provisions for amendment and revision must provide for approval of all amendments and revisions by referendum to the electors of the county. The amendment or revision shall be considered ratified if a majority of the electors voting on the amendment or revision cast their ballots in favor of adoption.

¹In our letter to the Attorney General, we identified the following arguments supporting the validity and relevancy of HRS Chapter 50: (1) The language of HRS Chapter 50 is plain and unambiguous with regard to its application to successive, and not just initial, county charter commissions; (2) HRS Chapter 50 has not been explicitly repealed, and repeals by implication are disfavored; and (3) HGEA v. County of Maui, 59 Haw. 65 (1978) confirms, not rejects, the continuing validity of HRS Chapter 50, and demonstrates that HRS Chapter 50 addresses matters of statewide concern and interest and has not been superseded by county charter provisions.

Roy T. Hiraga, County Clerk
October 31, 2002
Page 3

On the subject of statutory construction, the Supreme Court of Hawaii has stated:

When construing a statute, the starting point is the language of the statute itself. Courts are bound to give effect to all parts of a statute, and that no clause, sentence, or word shall be construed as superfluous, void, or insignificant if a construction can be legitimately found which will give force to and preserve all words of the statute. Words are given their common meaning unless some wording in the statute requires a different interpretation. Moreover, although the intention of the legislature is to be obtained primarily from the language of the statute itself, we have rejected an approach to statutory construction which limits us to the words of a statute, for when aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no rule of law which forbids its use, however clear the words may appear on superficial examination. ... Finally, a rational, sensible and practicable interpretation of a statute is preferred to one which is unreasonable or impracticable, because the legislature is presumed not to intend an absurd result, and legislation will be construed to avoid, if possible, inconsistency, contradiction, and illogicality.²

In view of the provisions cited above, we believe that the most reasonable interpretation of the phrase, "larger majority", as used in HRS Section 50-10, is that it means the greater number of "yes" votes, and not, for example, the greater ratio of "yes" to "no" votes. This interpretation is consistent with the plain meaning of the word "majority".³ Further, there is no indication in HRS Chapter 50 that "majority" was intended to reference a percentage or ratio, and we do not believe it appropriate to read into the subject text a meaning which has no textual support.

²Cavetano v. Yoshina, No. 25372, slip op. at 1-2 (Hawai'i Oct. 7, 2002).

³The American Heritage Dictionary 757 (2d ed. 1982). ("majority ... 1. The greater number or part of something. ... 2.b. The number of votes cast in any election above the total number of all other votes cast.")

In addition, construing "larger majority" to mean the higher ratio of "yes" to "no" votes could lead to unintended and irrational results. Assume, for example, the following hypothetical election results on competing charter amendment proposals:

	<u>YES</u>	<u>NO</u>
Charter amendment proposal 9:	1,000	900
Charter amendment proposal 9A:	100	50

In the hypothetical circumstances summarized above, both proposals have received more "yes" votes than "no" votes; however, the ratio of "yes" to "no" votes differs between the proposals.⁴ If "larger majority", as used in HRS Section 50-10, were construed to mean the higher ratio of "yes" to "no" votes, Charter amendment proposal 9A would prevail, despite having received far fewer "yes" votes than proposal 9, because its ratio of "yes" to "no" votes is 2:1 as compared to proposal 9 with its ratio of 10:9. We believe that such a result conflicts with the intended purposes of HRS Chapter 50, which calls for the voters (or "electors", as they are referred to in HRS Chapter 50) to approve of charter amendments and revisions by referendum. By contrast, interpreting "larger majority" to mean the larger number of "yes" votes avoids this irrational result.

Our interpretation is also consistent with the general intent and purpose of the voting procedures set forth in HRS Chapter 50. These procedures were adopted⁵ by the State Legislature to clarify matters relating to ballot preparation and were a response to the Hawaii Supreme Court's decision in Kimura v. County of Hawaii, 49 Haw. 336 (1966). In Kimura, the Court suggested that legislation be considered to supply details as to the form of the ballot for charter proposals, the manner of voting, and the vote required when alternatives are submitted.⁶ It is appropriate, therefore, that

⁴It should be noted that, pursuant to HRS Section 50-10, blank ballots and spoiled ballots are not counted in determining the majority of the votes.

⁵Act 235, 1967 Haw. Sess. Laws 356. Act 235 amended Chapter 143A, Revised Laws of Hawaii 1955, as amended, pertaining to county charters.

⁶S.C. Rep. 430, 4th Legis., House J. 636 (1967).

Roy T. Hiraga, County Clerk
October 31, 2002
Page 5

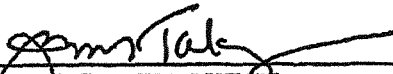
HRS Chapter 50 be interpreted in a manner that achieves, as much as possible, clear and sensible election results.'

If you have any questions or concerns, please do not hesitate to contact me.

BTM:ko

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cc: James B. Takayesu, Corporation Counsel
Terry Venc1, Chair, Charter Commission

APPROVED FOR TRANSMITTAL:



JAMES B. TAKAYESU
Corporation Counsel

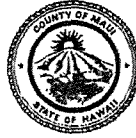
'Our conclusion is also consistent with the use of the term "majority" in the Revised Charter of the County of Maui (1983), as amended ("Charter"). Section 14-2(3) of the Charter states, in pertinent part, as follows:

3. Should the majority of the voters thereon approve the proposed amendments to this charter, the amendments shall become effective at the time fixed in the amendment, or if no time is fixed therein, thirty (30) days after its adoption by the voters of the county.

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

May 11, 2012

MEMO TO: Patrick K. Wong
Corporation Counsel

F R O M: G. Riki Hokama, Chair *GR*
Policy Committee

SUBJECT: **PROPOSED CHARTER AMENDMENTS** (CHARTER COMMISSION'S
PROPOSALS) (POL-10(12))

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CORPORATION COUNSEL
2012 MAY 11 PM 3:02

Section 50-9 of the Hawaii Revised Statutes provides:

If the legislative body of the county proposes no alternative sections to the charter, the charter commission shall submit a draft of the proposed charter to the county clerk within thirty days after it has received the charter from the legislative body. If alternatives are submitted by the legislative body of the county to the commission, then the commission shall accept or reject the alternatives within thirty days after the charter has been returned to it and shall report to the legislative body of the county any rejection. The legislative body of the county may within ten days after receiving such notification recall any or all of the alternative proposals rejected by the commission. Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by the legislative body of the county which have not been accepted by the commission and incorporated in its draft.

In 2002, the Council adopted Committee of the Whole Report 02-58, which stated, at page 4, that "Any rejected Council alternative will be placed on the general-election ballot in November in competition with the corresponding Charter Commission proposal (unless the Council recalls or retracts the alternative within 10 days of being notified of the Charter Commission's rejection)."

May I please request your written opinion on the following:

Patrick K. Wong
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1. If the Charter Commission rejects a Council alternative, and the Council takes no affirmative action, what becomes of the rejected alternative once the Charter Commission submits the proposed charter to the County Clerk? Is the rejected alternative placed on the general-election ballot in November in competition with the corresponding Charter Commission proposal? Please explain.
2. What does it mean for the Council to "recall" a rejected alternative? If the Council wants to recall a rejected alternative, what process does it follow? If the Council recalls an alternative through the adoption of a resolution, please transmit a form of a resolution that, if adopted, would constitute a recall of the rejected alternative. If the Council does not recall an alternative through the adoption of a resolution, please transmit the appropriate form of legislation.
3. Is the Council permitted to modify a rejected alternative and transmit the modified proposal to the County Clerk for placement on the general-election ballot, in competition with the corresponding Charter Commission proposal?
4. Is the Council permitted to place an alternative proposal on the ballot that has not been considered by the Charter Commission, pursuant to the authority set forth in Section 14-1 of the Charter (i.e., by resolution of the Council adopted after two readings on separate days and passed by a vote of six or more members of the Council). If so, would that alternative proposal be placed on the general-election ballot, in competition with the corresponding Charter Commission proposal?

I would appreciate receiving a response by **Monday, May 21, 2012**. 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 (Carla Nakata at ext. 7659, or Tammy Frias at ext. 8005).

pol:ltr:010(12)acc05:cmn

cc: Edward S. Kushi, Jr., First Deputy Corporation Counsel
Jeffrey Kuwada, County Clerk
Ken Fukuoka, Director of Council Services