


DEPARTMENT OF THE CORPORATION COUNSEL

COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740

May 9, 2003

Memo To: G. Riki Hokama, Chair
Budget and Finance Committee

From: Traci Fujita Villarosa 
Deputy Corporation Counsel

Subject: Open Space Fund (BF-1)

You have asked this office to provide you with legal advice on whether section 9-19(3) of the Revised Charter of the County of Maui (1983), as amended ("Charter"), relating to the Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund ("Open Space Fund"), establishes a mandated baseline of appropriations.

Charter Section 9-19 states:

Section 9-19. Open Space, Natural Resources, Cultural Resources, and Scenic Views Preservation Fund.

1. In adopting each fiscal year's budget and capital program, the council shall appropriate a minimum of one percent (1%) of the certified real property tax revenues to a fund known as the open space, natural resources, cultural resources, and scenic views preservation fund. The revenues in this fund shall be utilized for purchasing or otherwise acquiring lands or property entitlements for land conservation purposes in the county of Maui for the following purposes: public outdoor recreation and education; preservation of historic or culturally important land areas; protection of significant habitat or ecosystems, including buffer zones; preserving forests, beaches, coastal areas and agricultural lands; protecting watershed lands to preserve water quality; conserving land for the purposes of reducing erosion, floods, landslides, and runoff; and improving disabled and public access to, and enjoyment of, public land, open space, and recreational facilities.

2. Any balance remaining in this fund at the end of the fiscal year shall not lapse, but shall remain in the fund, accumulating from year to year. The revenues in this fund shall not be used for any purpose except those listed in paragraph one of this section.

3. The council shall by ordinance establish procedures for the administration and expenditure of the revenues in this fund. The appropriations to this fund shall not substitute, but shall be in addition to, those appropriations historically made.

The interpretation of the charter is similar to the interpretation of a statute. Maui County Council v. Thompson, 84 Hawaii 105, 929 P.2d 1355, Hawaii'i (1996). The fundamental starting point for statutory interpretation is the language of the statute itself. Peterson v. Hawaii Elec. Light Co., 85 Hawaii 322, 944 P.2d 1265 (Sept. 5, 1997). Where the statutory language is plain and unambiguous, the plain and obvious meaning should be given effect. Id. Statutes are open to construction only where the language used in the statute is ambiguous and requires interpretation. Rules of interpretation are resorted to for the purpose of resolving an ambiguity and not for creating one. Legislative intent is the guiding star in the interpretation of a statute. Id. Implicit in the task of statutory construction the foremost obligation is to ascertain and give effect to the intention of the legislature, which is to be obtained primarily from the language contained in the statute itself. Id. When there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. Id. In construing an ambiguous statute, the meaning of the ambiguous words may be sought by examining the context, with which the ambiguous words, phrases, and sentences may be compared, in order to ascertain their true meaning. Id. In construing a statute one must look to the object to be accomplished, the evils and mischiefs to be remedied, and place on the statute a reasonable construction that will best effect its purpose. Territory of Hawaii v. Morita, 41 Haw. 1 (March 12, 1955).

It is clear that section 9-19(1) of the Charter establishes the minimum amount, 1% of the certified real property tax revenues, council must appropriate each fiscal year for the Open Space Fund. Council may, of course, appropriate additional revenues beyond 1% of the certified real property tax revenues to the Open Space Fund.

What is less clear is the meaning of the second sentence in section 9-19(3) of the Charter and its reference to "appropriations historically made." Because the language is unclear, we must examine the intent of the Charter Commission to shed light on this section's meaning.

Section 9-19 of the Charter was proposed by the 2001 - 2002 Maui County Charter Commission ("Charter Commission") and adopted by the voters of the County of Maui on November 5, 2002. The purpose of section 9-19 of the Charter was to commit Maui County to a program of acquiring more land for open space. Revised Final Report of the 2001 - 2002 Maui County Charter Commission ("Commission Report"), page 33. The Charter Commission envisioned a fund that would retain and accumulate unspent moneys from year to year allowing the County to maintain a growing resource to utilize for the purchase of land for open space as such land becomes available. Commission Report, page 34. The Charter Commission reasoned that having an established fund would allow the funds to be leveraged to increase the amount of land that can be purchased and that the County could purchase land before prices become inflated. Commission Report, page 34. However, the Commission Report states clearly that, while section 9-19 of the Charter commits the county to a program of open space acquisition, the Mayor and Council would have the "flexibility to determine the actual budgetary amounts that should be committed to this program." Commission Report, page 34.

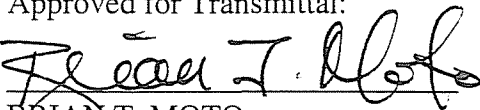
The Commission Report does not elaborate as to the meaning or calculation of "appropriations historically made", and it is debatable as to exactly how such appropriations should be identified and measured.¹ Given the intent expressed in the Commission Report, we do not believe that section 9-19(3) of the Charter establishes any fixed, predetermined baseline or formula for appropriations. Rather, the provision in question (i) prevents the wholesale displacement of land acquisition appropriations in annual County budgets by the Charter-mandated 1% annual appropriation to the Open Space Fund and (ii) forecloses the possibility of section 9-19 being interpreted as the exclusive means for budgeting for land acquisitions.

Moreover, even assuming, for the sake of argument, that Section 9-19(3) imposes some identifiable baseline for appropriations (a position which, as discussed above, we do not adopt), the fact remains that the Budget and Finance Committee has proposed a Fiscal Year 2004 budget that appropriates more than \$350,000 for the purchase of the Wailuku Swimming Pool property and up to \$4,050,000 for the Ukumehame land acquisition. These appropriation amounts are either similar to or exceed appropriations for land acquisitions that have been made in recent fiscal year budgets. Thus, any concern regarding compliance with Charter section 9-19(3) is academic, at least with regard to the proposed Fiscal Year 2004 budget.²

If you should have any further questions, please do not hesitate to contact me.

TFV:tl

Approved for Transmittal:



BRIAN T. MOTO

Corporation Counsel

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cc: Mayor Alan M. Arakawa
Danilo Agsalog, Budget Director
Keith A. Regan, Director of Finance

¹For example, it is unclear how far back in time one should go and how many budget cycles one should consider in determining what has "historically" been made in terms of appropriations. Any such review of past budgets would also require the exercise of judgment in determining whether any particular appropriation should or may be characterized as fulfilling one or more of the many purposes set forth in Charter §9-19(1).

²The estimated revenues for certified real property taxes is \$116,697,176. Council proposes to appropriate 1% of the certified real property taxes, or \$1,166,972, to the Open Space Fund. Thus, Charter section 9-19(1) has been complied with.