

**LOCAL GOVERNMENT  
LAW IN HAWAI'I**

# OVERVIEW

- Types of Governing Authority
- History of Divisions of Power
  - Organic Act and the 1905 County Act
  - 1950, 1968, and 1978 Constitutional Conventions
- Relevant Laws
  - State Constitution
  - State Statutes
  - Case Law
- Areas of Cooperation & Dual Authority
- Other Issues
- Summary

# POWERS OF LOCAL GOVERNMENTS

The U.S. Constitution gives power to the federal and state governments but not to local governments.

**Local governments are created by the states and have only those powers that the state governments give them.**

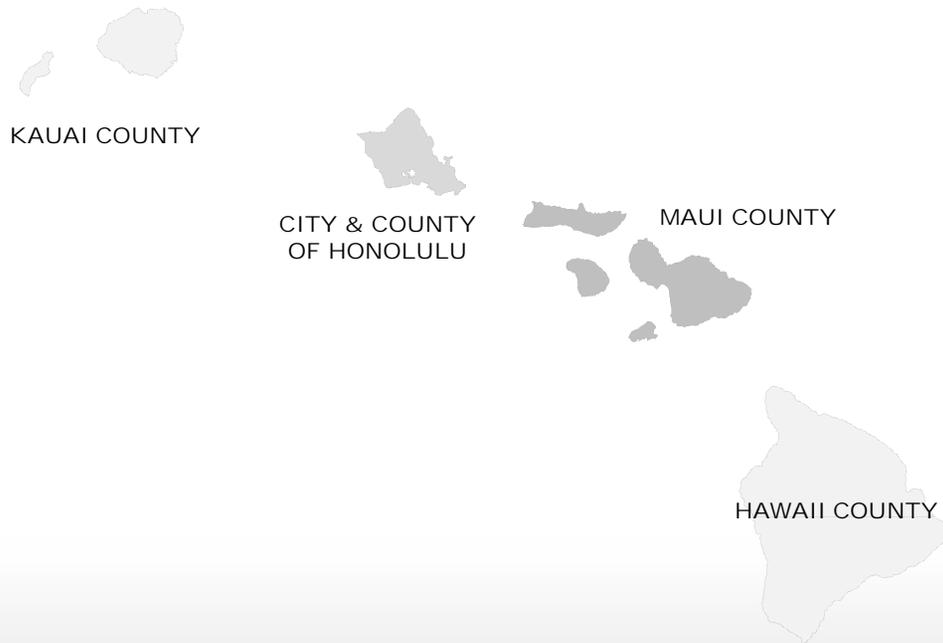
The powers that state governments give to local governments vary and Hawai'i is fairly unique.

# TYPES OF GOVERNING POWER

## Local governments in America follow one of two types of governing authority: Dillon Rule or Home Rule

- **Home Rule** gives local governments governing authority to make a wide range of legislative decisions that have not been addressed by the state
- **Dillon Rule** is that local governments can only legislate what has been explicitly delegated to them by the state.
  - Justice John Dillon was a member of the Iowa Supreme Court. Justice Dillon wrote in an opinion:
  - “A municipal corporation possesses and can exercise the following powers and no other: First, those granted in express words (from the state); second, those necessarily implied by or necessarily incident to the powers expressly granted; third, those absolutely essential to the declared objects and purposes of the corporation – not simply convenient, but indispensable; and fourth, any fair doubt as to the existence of a power is resolved by the courts against the corporation.”

# LOCAL GOVERNMENT IN HAWAII'



## FORMATION OF COUNTIES

- **Government has traditionally been centralized.** When Hawai'i assumed territorial status in 1900, there were no organized towns, cities, or counties.
- **The Organic Act of 1900** permitted territorial legislature to "create counties and town and city municipalities" within the Territory.
- **Five Counties created by law in 1905.** In 1907, the County of Oahu was converted to the City and County of Honolulu.

# EARLY MAUI COUNTY GOVERNMENT

- The 1905 County Act conferred on counties certain corporate functions.
- The legislative body of Maui County was the Board of Supervisors and the territorial government conferred on it certain powers.
- Among other powers, the Board of Supervisors was permitted to “regulate by ordinance within the limits of the county, all local police, sanitary and other regulations not in conflict with the general laws of the Territory, or rules and regulations of the Territorial board of health, and fix a penalty for the violation of such ordinances.”
- In 1911, the County Act was amended to provide for at-large elections for the Maui County supervisors.
- In 1953, the number of supervisors was increased from 7 to 9 & one was required to be from Moloka‘i and one from Lāna‘i.

## 1950 CONSTITUTIONAL CONVENTION & 1959 STATE CONSTITUTION

- Permitted legislature to create political subdivisions, including counties, “and provide for the government thereof.”
- Local governments had the power to frame and adopt a charter “within such limits and under such procedures as may be prescribed by law.”
- Taxing power was reserved to the state. The state legislature apportioned state revenue to the political subdivisions.
- Included the following section, which is still found in our constitution: “This article shall not limit the power of the legislature to enact laws of statewide concern.”



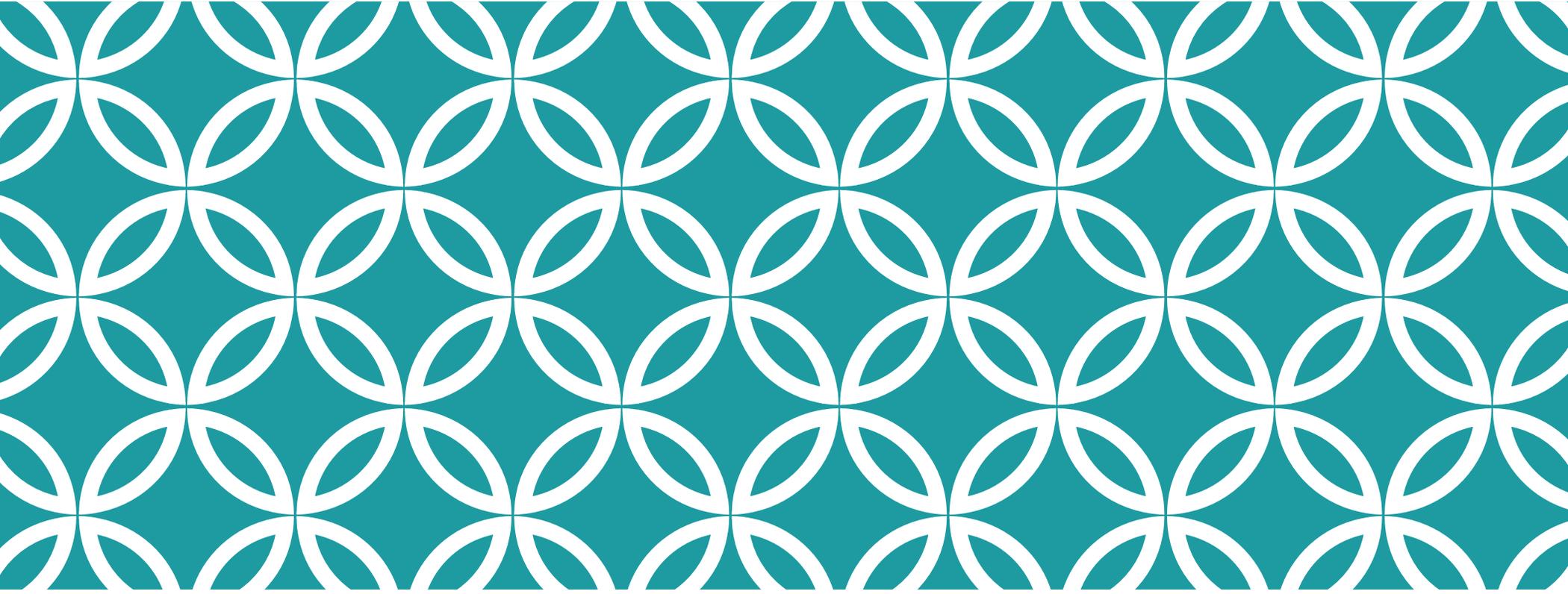
## 1968 CONSTITUTIONAL CONVENTION – ADDED THE “SUPERIOR CLAUSE”

- ❖ **Prior to 1968, only the City & County of Honolulu had a charter**
- ❖ **The 1968 amendments included the addition of a “superior clause”**
  - In Fasi v. City & County of Honolulu, the Hawaii Supreme Court held that a charter, even if adopted under the Constitution, is no more than a statutory charter, subject to continuing legislative control.
  - The 1968 amendments added a provision which gave county charters a higher status within the a prescribed area – the executive, legislative, and administrative structure and organization of the county. This provision is referred to as the “**superior clause.**”
  - All other powers are delegated to the Counties by the state legislature.
- ❖ **Despite attempts and more home rule provisions, the 1968 Constitutional Convention left much of the local government provisions in place from the 1950 constitution.**
  - Counties were not granted residual powers
  - Full taxing powers remained with the state legislature.

# 1978 CONSTITUTIONAL CONVENTION

- ❖ A number of delegates advocated increased “home rule” fiscal and planning powers for the counties.
- ❖ Amendment allows counties to have all powers relating to real property taxation.
  - Prior to this amendment, the counties set the real property tax rate but state made assessments and determined policy on exemptions and collected the money
- ❖ Other home rule suggestions were rejected including allowing counties to levy their own tourism taxes.





# STATE CONSTITUTION



# HAWAII STATE CONSTITUTION, ART. VII — LOCAL GOVERNMENTS

Section 1 authorizes the state legislature to create the counties and grant the counties such power as it deems necessary.

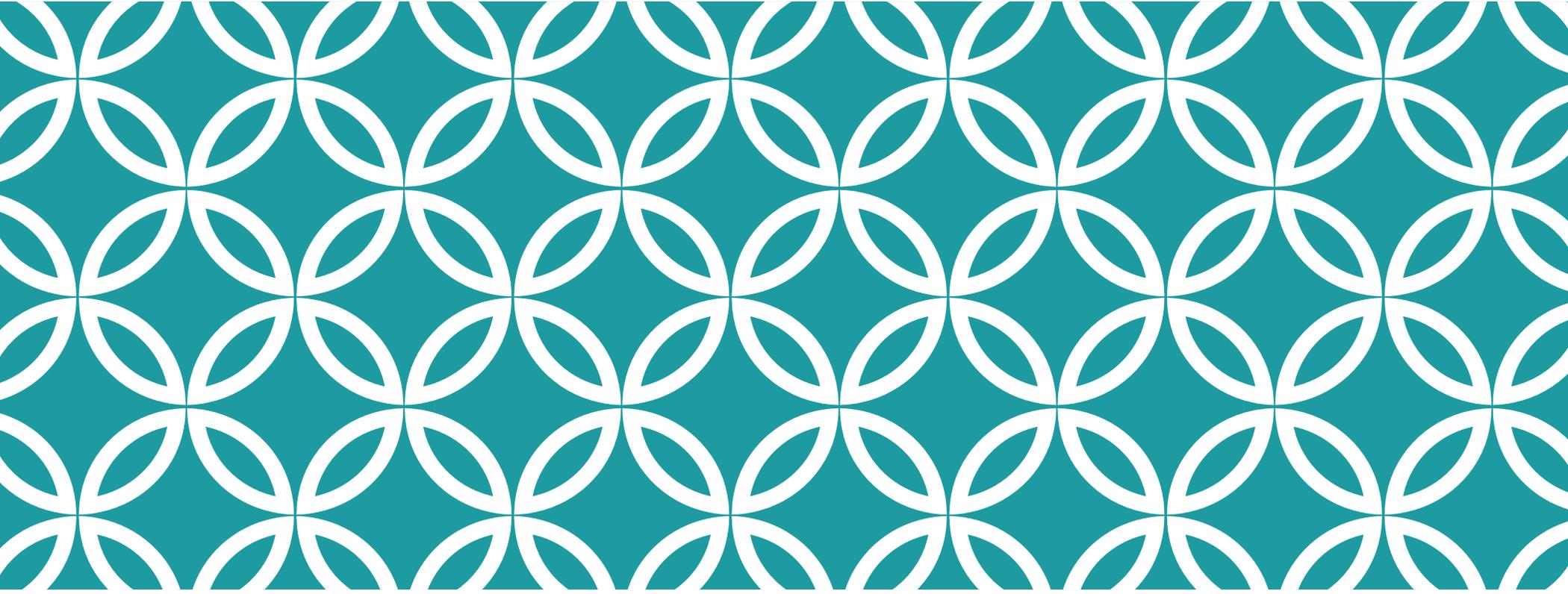
**Section 2 establishes the counties' "home rule" powers with respect to charter provisions concerning the structure and organization of county government. These charter provisions are superior to statutory provisions, "subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions."**

**Section 3 reserves the taxing power to the State and delegates the real property tax function to the counties.**

Section 4 provides that no law may be passed mandating a county to pay a previously accrued claim.

Section 5 requires the state to share in the cost of any increased level of service required of county. The degree to which the state shares in the cost of increased services is not mandated.

**Section 6 confirms that the powers conferred upon the counties did not restrict any of the powers of the legislature on state matters.**



# STATUTORY LAW



# HRS SECTION 46-1.5

In accordance with Article VIII of the Hawai'i Constitution, the state legislature enacted Hawai'i Revised Statutes § 46–1.5 to allocate powers to the counties. This statute lists 27 separate topic areas where counties are expressly granted authority.

These powers include, for example, the power to purchase, lease, or hold real and personal property; the power to contract; regulate leasing and rental conditions; and the power to sue and be sued.

General police powers of the counties are granted in HRS § 46-1.5(13):

*Each county shall have the power to enact ordinances deemed necessary to protect health, life, and property, and to preserve the order and security of the county and its inhabitants on any subject or matter not inconsistent with, or tending to defeat, the intent of any state statute where the statute does not disclose an express or implied intent that the statute shall be exclusive or uniform throughout the State.*

# HRS CHAPTER 50

In accordance with Article VIII of the Hawai'i Constitution, the state legislature enacted HRS § 50 to allocate powers to the counties.

HRS Chapter 50 allows the counties to form a charter commission and sets the limits and procedures for creating a charter.

**HRS § 50-10** provides that “Upon adoption, the charter shall become the organic law of the county and shall supersede any existing charter and all laws affecting the organization and government of the county which are in conflict therewith.”

**HRS § 50-15 – Reserved Powers:** “Notwithstanding the provisions of this chapter, there is expressly reserved to the state legislature the power to enact all laws of general application throughout the State on matters of concern and interest and laws relating to the fiscal powers of the counties, and neither a charter nor ordinances adopted under a charter shall be in conflict therewith.”

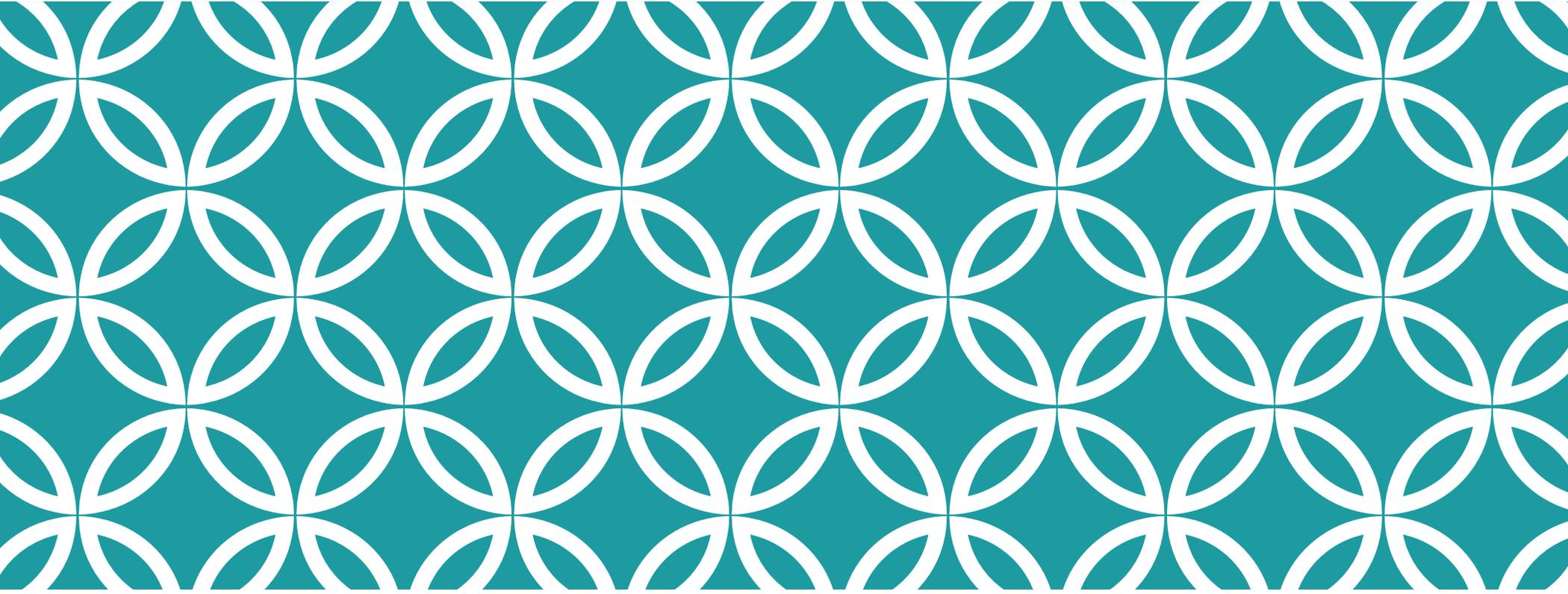
# OTHER STATE STATUTES ALSO RELATE TO THE POWERS OF THE COUNTY

- There are several other statutes that relate to the powers of County governments.

- Some examples include:

Eminent domain powers (HRS § 46-61); maintenance of parks (HRS § 46-65); issuance of County bonds (HRS Chapter 47); and the duties and functions of police commissions (HRS Chapter 52).

- If there are proposed changes to the charter relating to a specific County department, it may be worthwhile to have a separate presentation on the state statutes that relate to that particular department and its duties.



## CASE LAW



# THE “SUPERIOR CLAUSE”

## HGEA v. County of Maui (1978)

Does state law preempt a county charter?

The Hawaii Supreme Court observed that the delegates to the 1968 Constitutional Convention “intended that county charters acquire a stature which would resist legislative interference in some areas.”

These areas encompass charter provisions that affect “the organization and government of the county...”

The Court also observed that HRS 50-10 was designed so that any state law “affecting the organization or governmental structure” of a county would not invalidate conflicting charter provisions.

# THE “SUPERIOR CLAUSE”

## **HGEA v. County of Maui (1978)**

The Court noted that the Constitution does not grant local governments complete home rule.

Counties are not permitted to adopt provisions in its charter that conflict with issues of “statewide concern.”

After an examination of one of the standing committee reports of the 1968 Constitutional Convention, the Court held that “the final authority on all civil service and compensation matters...remain with the [state] legislature.”

# OVERLAP VS. PREEMPTION

## Kunimoto v. Kawakami (1976)

- The Court ruled that on the counties may not thwart the state's performance of its duties on issues of statewide concern.
- Though the counties have the power to frame and adopt its charter, “the provisions of the charter must be limited to the self-government of the county and within the other limits set forth under state statutes.”
- This prohibition only applies “if the counties are not given specific authority to take over the function.”

# OVERLAP VS. PREEMPTION

## **Richardson v. City and County of Honolulu (1994)**

A municipal ordinance may be preempted by a state law if (1) it covers the same subject matter embraced within a comprehensive state statutory scheme disclosing an express or implied intent to be exclusive and uniform throughout the state or (2) it conflicts with state law.

This test is referred to as the “Richardson test” or the “comprehensive statutory scheme” test.

Courts frequently treat this test as involving several overlapping elements, including showings that (1) the state and local laws address the same subject matter; (2) the state law comprehensively regulates that subject matter; and (3) the legislature intended the state law to be uniform and exclusive.

# OVERLAP VS. PREEMPTION

## **Robert Ito Farm, Inc. v. Maui (2015)**

Are Maui ordinances banning GMOs preempted by federal and state law? Yes.

Do the statutes exceed the County's authority under the Charter? Yes.

- The court applied the “comprehensive statutory scheme” test in Richardson:
  1. Does the municipal ordinance cover the same subject matter as state law?
  2. If yes, does the statutory scheme disclose an express or implied intent to be exclusive and uniform throughout the state? The court noted that the state statutes do not have to specifically mention the authority over local governments on the issue.
- The ordinance also violated Section 13-10 of the Charter because the punishment exceeded the \$1,000 per day limit.

# POWER OF TAXATION (ART. VII, SEC. 3)

## Gardens at West Maui Vacation Club v. County of Maui (1999)

Ruling: The 1978 constitutional amendments permit counties to charge different real property taxes based on use.

“Article VII, section 3 was expressly and manifestly designed to transfer to the counties **broad powers of real property taxation**...The proceedings of the 1978 constitutional convention also reveal that the purpose of the amendment was to place the burden of the real property taxation system at the county level.”

# POWER OF TAXATION (ART. VII, SEC. 3)

## **State ex rel. Anzai v. City & County of Honolulu (2002)**

Ruling: The counties may tax real property that is leased by the State despite a state law which exempted the State exempted from real property taxation.

The power to tax real property encompasses matters of strictly local concern and this power included the power to grant or repeal exemptions from real property taxation.

# POWER OF TAXATION (ART. VII, SEC. 3)

## Kaua'i v. Baptiste (2007)

Ruling: A voter initiative may not amend the county charter to limit real property taxes.

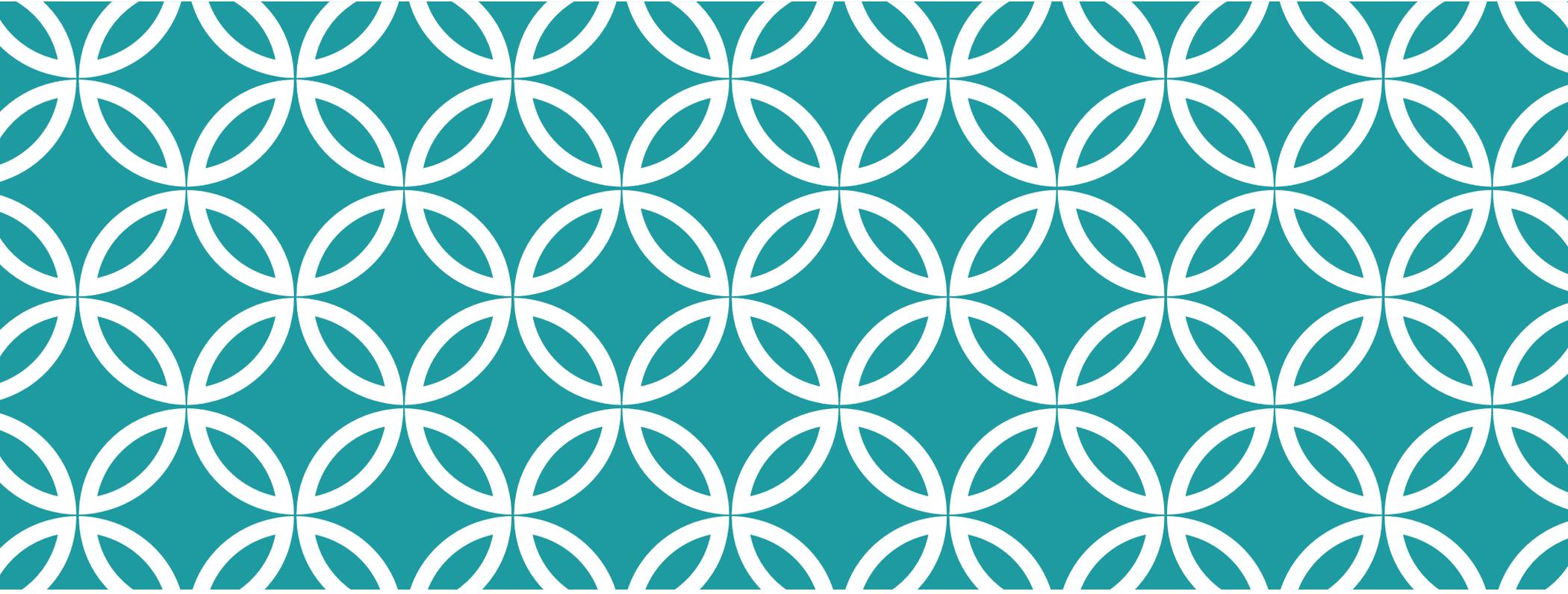
The phrase “the counties,” as used in Article VII, Section 3 of the Constitutional means local governments, *i.e.*, county councils and not the people of the county.

# POWER OF TAXATION (ART. VII, SEC. 3)

## **Kaheawa Wind Power LLC v. Maui (2020)**

Ruling: Maui's ordinance that redefined "real property" to include wind turbines is not a valid exercise of the County's power.

The Constitution does not grant the Counties the power to define "real property." Real property includes affixed machinery or equipment "whose use is necessary to the utility of the land or whose removal therefrom cannot be accomplished without causing substantial damage to the land."



**AREAS OF COOPERATION &  
DUAL AUTHORITY** |

# AREAS OF COOPERATION & DUAL AUTHORITY



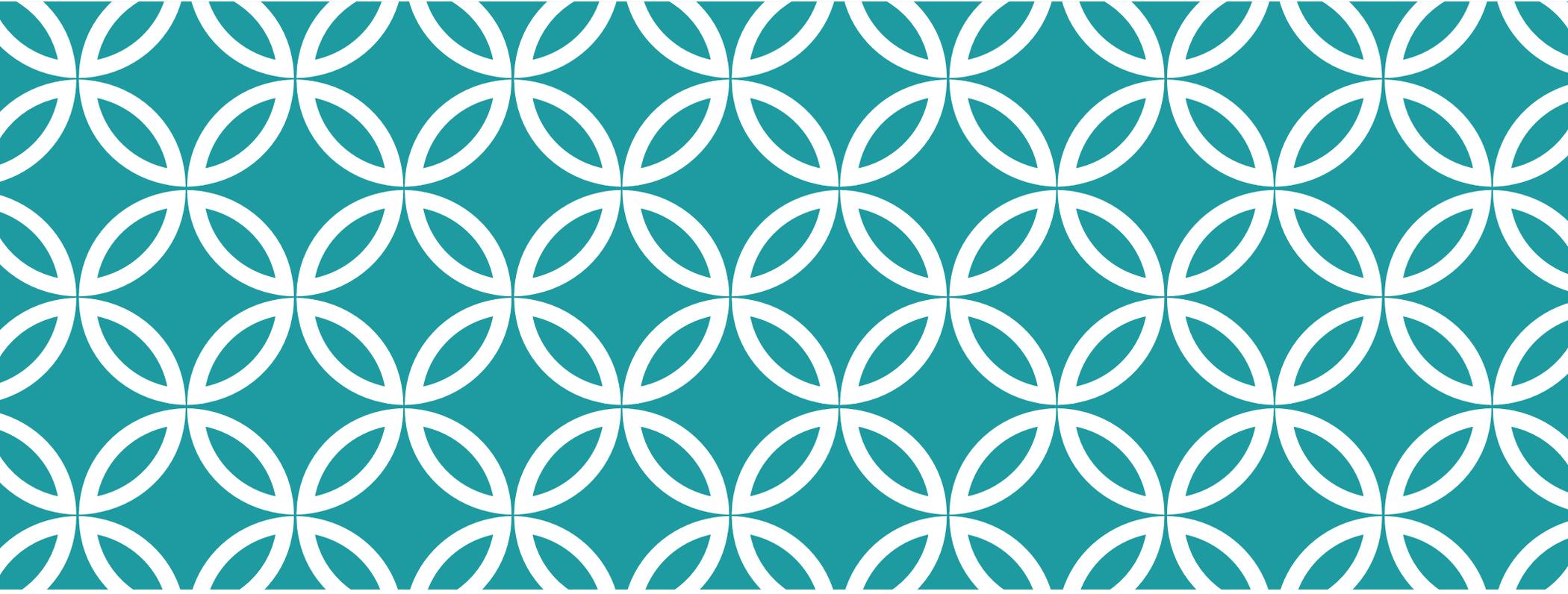
Layer cake



Marble cake

# AREAS OF COOPERATION & DUAL AUTHORITY

- **Planning/Zoning Laws** – State Land Use Commission and the County Planning Department and Related Boards and Commissions
- **Transportation** – State Department of Transportation; Maui County Department of Public Works; Maui County Department of Transportation; and the Maui Metropolitan Planning Organization
- **Water** – State Department of Land and Natural Resources; State Commission on Water Resource Management; County Department of Water and the Board of Water Supply
- **Environmental Laws** – State Department of Health; County Department of Environmental Management
- **Public Safety** – Hawaii Department of Public Safety, Office of Sheriff; County Police Departments and Commissions; County Prosecutors; State Attorney General



## OTHER ISSUES



# OTHER ISSUES

## **State v. Medeiros (1999)**

HRS § 46-1.5(8) gives counties “the power to fix the fees and charges for all official services not otherwise provided for.”

What constitutes a “fee” or a “charge” as distinguished from a “tax”?

The Medeiros test consists of three prongs: The charge is not a tax if it: 1) applies to the direct beneficiary of a particular service; 2) is allocated directly to defraying the costs of providing the service; and 3) is reasonably proportionate to the benefit received.

# OTHER ISSUES

## **Maui County Council v. Thompson (1996)**

Does the Council's power to hire and pay for special counsel by a 2/3 vote imply the absence of any such power in the executive branch?

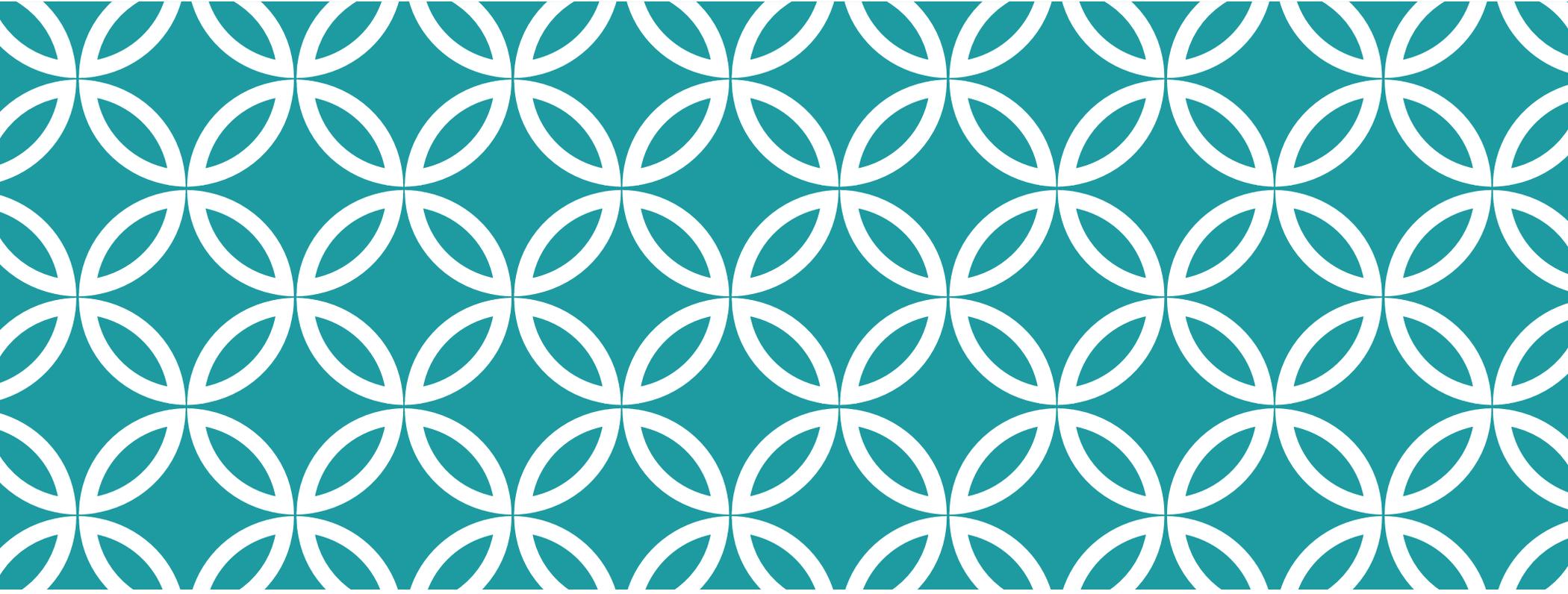
Yes.

The charter provided that the Council has the power to “retain or employ, by a vote of two-thirds of its entire membership, special counsel for any special matter presenting a real necessity for such employment.” [note Section 3-6(6) has since been amended]

This does not imply that the executive branch has the power to hire special counsel without a vote of the Council.

# SUMMARY

- (1) The County only has the powers delegated to it by the state through the constitution or by statute.
- (2) The Constitution gives the County home rule powers over (a) the structure and organization of County government and (b) “all functions, powers and duties relating to the taxation of real property.” The rest of the powers are granted by statute.
- (3) The powers granted to the County do not limit the power of the State to enact laws of “statewide concern.”
- (4) To determine if a County ordinance is preempted by state law, courts apply the “comprehensive statutory scheme” test.
- (5) There are areas of dual authority where county governments implement state and/or federal regulation – may be an area for a future presentation.



**MAHALO** |