

October 26, 2017

MEMO TO: PEA-48 File

F R O M: Yuki Lei K. Sugimura, Chair  
Policy, Economic Development, and Agriculture Committee

*Yuki Lei K. Sugimura*

SUBJECT: **TRANSMITTAL OF INFORMATIONAL DOCUMENTS RELATING  
TO CONFIRMATION OF THE DIRECTOR OF FINANCE** (PEA-48)

The attached informational documents pertain to Item 48 on the Committee's agenda.

pea:misc:048afile01

Attachments

RECEIVED  
2017 OCT 26 AM 8:59  
OFFICE OF THE  
COUNTY COUNCIL

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

October 7, 2017

MEMO TO: Patrick K. Wong  
Corporation Counsel

F R O M: Mike White  
Council Chair

A handwritten signature in black ink, appearing to be "Mike White", is written over the printed name.

SUBJECT: **OPINION REGARDING EFFECTIVE DATE OF AMENDMENT TO MAUI COUNTY CHARTER SECTION 6-2 RELATING TO REVIEW OF APPOINTMENTS OF COUNTY DIRECTORS BY THE COUNCIL**  
(17-235)

The Council received a letter dated September 29, 2017 (copy attached) from the Mayor notifying the Council of the vacancy in the Director of Finance position and seeking Council confirmation of the Deputy Director as the Director. The Mayor's letter noted that "it is confusing as to what happened with the wording for the Charter requirements" and therefore asked that the Director's nomination be forwarded to the "appropriate committee to begin the confirmation process."

By this letter, I am requesting a legal opinion as to the effective date of Section 6-2 of the Revised Charter of the County of Maui ("Charter"), relating to review of the Mayor's appointments of County directors by the Council. Specifically, I ask that you opine as to whether the Council is authorized to confirm or deny the appointment of the nominee as Finance Director, or whether such consideration is premature as it predates the effective date stated in the resolution initiating the amendment to the Charter. To assist you in your research and analysis, I offer the following information and attached documents.

**Council's Intent Regarding the Effective Date of the Charter Amendment.**

Resolution 16-15 (copy attached), the Charter amendment ("Amendment") adopted by the voters in 2016, and the associated committee report (copy attached) state that the amendment proposed by Council shall take effect on

January 2, 2019. The Amendment approved by the voters has not yet been published in the *Maui News* because publication must occur within 45 days of the effective date of the amendment (*See*, Charter Section 14-2(3)). The ballot question, as proposed in Resolution 16-15 and approved as to form and legality by Corporation Counsel, did not include the effective date. It is clear, however, from the resolution and committee report that the Council intended the Amendment “to make the effective date January 2, 2019, to coincide with the beginning of the term of the next Mayor.” In other words, the Council in recommending the Amendment did not intend that it would apply to appointments of directors during the current term of the Mayor.

Under Section 14-1(1) of the Charter, a Council-initiated charter amendment is defined as “a resolution of the council adopted after two readings on separate days and passed by a vote of six or more members of the council.” Once approved by a majority of the voters, “the proposed amendments to this charter . . . 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.” Section 14-2(3) of the Charter.

In this instance, the proposed Amendment is Resolution 16-15 and the time fixed in the amendment is the effective date of January 2, 2019. The passage of Resolution 16-15, initiating a charter amendment and defining the terms of that amendment was a legislative act of the Council consistent with the Council’s authority under Articles 4 and 14 of the Charter.

**Inclusion of Charter Amendment in 2017 Publication of Printed Charter by the Revisor of County Laws.**

I am aware that in January 2017, copies of the Charter were printed and include the Amendment without a reference to the effective date. While I agree that the better practice would have been to either not to have included the Amendment in the printed Charter until January 2019, or to have included a revisor’s note in the printed Charter stating the effective date. Nonetheless, compilation of the Charter, in both printed and electronic form, is a matter of convenience for the legislative branch and the public to provide an updated version of the Charter that includes revisions and amendments as of a certain date. (*See attached*, Ordinance 3958 (2012), a bill relating the compilation, publishing, and distribution of the Charter; Committee Report 12-57 (2013), discussing the timeliness of incorporating Charter amendments into a single, cohesive document; and minutes of the Council’s Policy Committee, May 23,

2012, in which councilmembers discussed publishing the Charter and amendments online and continuing the practice of publishing hard copies.)

It is important to note that the laws applicable to the publication of the Charter and its amendments (Section 14-4 of the Charter and Section 1.14.020, Maui County Code) do not address errors or omissions that may occur during the compilation and publishing process. This is because errors or omissions by the revisor do not change the effectiveness of the underlying laws passed by resolution or ordinance. Under Section 1.14.010, MCC, the County Clerk is the revisor of laws which includes the Charter, published following an election where amendments were adopted, and the Maui County Code published twice per year. *See respectively*, Sections 1.14.020(C) and 1.14.030, MCC. In preparing supplements to the code or compiling amendments to the Charter, the revisor [County Clerk] is not authorized to make amendments that alter the meaning or effect of original law. “In causing the preparation of supplements, the revisor . . . shall not alter the sense, meaning, or effect of any ordinance or rule.” Section 1.14.040, MCC.

### **The Form and Effect of the Ballot Question.**

As stated above, the ballot question, as proposed in Resolution 16-15 and approved as to form and legality by Corporation Counsel, did not include the effective date. The question is whether this is dispositive as to the effective date of the Amendment. Under Hawaii Revised Statutes (“HRS”) Section 11-112(b), a ballot “may include questions concerning . . . proposed charter amendments . . .” The statute is silent as to the construction of a proposed ballot question which is a matter of caselaw. The lead case in Hawaii is *Kahalekai v. Doe*, 60 Haw. 324, 590 P.2d 543 (1979) which included certain findings which are helpful and relevant in determining the proper form and content of a ballot question. A copy of the *Kahalekai* decision is attached for your reference.

In considering the manner in which proposed amendments are to be submitted to the electorate, the *Kahalekai* court followed guidance from several other jurisdictions and held that, “the broad authority vested in [the body proposing the amendment] . . . is subject to the limitation that the ballot must enable the voters to express their choice on the amendments presented in such form and language as not to deceive or mislead the public.” *Kahalekai* at 338, 553. The court also held that, “where information placed before the electorate is neither deceptive nor misleading, and they are given sufficient time within which to familiarize themselves with the content and effect of the proposed

amendments, they will be deemed to have cast informed ballots.” *Kahalekai* at 339, 553.

Here, the ballot question approved by resolution of the Council, approved as to form and legality by the Corporation Counsel, and published in the newspaper by the County Clerk as required by Section 14-2(2) of the Charter, clearly states that the proposed amendment would require Council approval of the Mayor’s appointment of department directors. The ballot question was not on its face deceptive or misleading and informed the electorate of the subject of the amendment.

### **Legal Questions.**

The ballot question omitted the effective date set forth in the proposed amendment, but did not alter the meaning or substance of the amendment. The question to your office is whether the omission of the effective date from the ballot question has the legal effect of overriding the effective date set forth in the Amendment initiated by the Council thus giving the Council the authority to review the Mayor’s nomination for Finance Director at this time. In reviewing the sufficiency and scope of the ballot questions, please consider recent challenges and litigation related to other Maui County ballot questions.

If your answer is that the Council does have current authority to review the Mayor’s nomination, please explain why your office approved as to form and legality the ballot question in the first instance without including the effective date. Please note that the Council is considering, but has not yet adopted, code revisions relating to the qualifications of director. Please opine as to any standards of review of a nominee that may apply. Under these circumstances, is the Council free to consider whatever qualifications of the nominee that the body deems appropriate, or is the Council review constrained by the Charter, code, or state law?

I would appreciate receiving a response by **October 12, 2017** to meet the Council’s posting deadline of Friday, October 13, 2017 for the Council meeting of October 20, 2017. To ensure efficient processing, please include the relevant PAF number in the subject line of your response.

Patrick K. Wong  
October 7, 2017  
Page 5

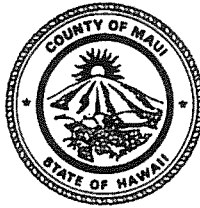
Should you have any questions, please contact me or Supervising  
Legislative Attorney Greg Garneau at ext. 7664.

paf:gjg:17-235a

Attachment

cc: Director of Council Services  
County Clerk

ALAN M. ARAKAWA  
MAYOR



RECEIVED SEP 29 2017

KEITH A. REGAN  
MANAGING DIRECTOR

**OFFICE OF THE MAYOR**

Ke'ena O Ka Meia  
COUNTY OF MAUI – Kalana O Maui

September 29, 2017

RECEIVED  
2017 SEP 29 PM 3:28  
OFFICE OF THE  
COUNTY COUNCIL

The Honorable Mike White  
Council Chairman  
Maui County Council

Dear Council Chair White:

**SUBJECT: RESIGNATION OF DIRECTOR OF FINANCE, APPOINTMENT  
OF INTERIM FINANCE DIRECTOR AND SUPPORT FOR MARK  
WALKER AS DIRECTOR OF FINANCE**

I would like to inform you that Director of Finance, Mr. Danny Agsalog will be resigning from his position effective September 30, 2017. Deputy Director, Mark Walker, will serve as the interim Director of Finance pending confirmation of a permanent Director by the Maui County Council.

While it is confusing as to what happened with the wording for the Charter requirements, I respectfully submit the name of Mr. Mark Walker as the permanent Director of the Department of Finance. Please process and forward this matter expeditiously to the appropriate committee to begin the confirmation process.

Should you have any questions, please feel free to contact myself or Executive Assistant, Mike Molina at 270-7855.

Sincerely,

A handwritten signature in black ink, appearing to read "Alan M. Arakawa".

Alan M. Arakawa  
Mayor

AA:MM/pn

cc: Maui County Council Members  
Danny Agsalog, Director, Department of Finance  
Mark Walker, Deputy Director, Department of Finance  
Lynn Araki-Regan, Director, Budget Office  
Keith Regan, Managing Director, Department of Management

# Resolution

No. 16-96

PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE

WHEREAS, the Revised Charter of the County of Maui (1983), as amended, provides for a process by which the Council shall confirm or deny the confirmation of the Mayor's appointments of the Corporation Counsel, Prosecuting Attorney, and Director of Water Supply; and

WHEREAS, although other department directors appointed by the Mayor are also charged with responsibilities that warrant the Council having approval authority over the appointments, no such process exists for the Mayor's appointments of the other department directors; and

WHEREAS, the Charter sets forth general qualifications for department directors, but there is a need to allow flexibility to establish, by ordinance, more specific qualifications and to adjust those qualifications; now, therefore,

BE IT RESOLVED by the Council of the County of Maui:

1. That pursuant to Section 14-1(1) of the Charter, it hereby proposes a new Section 6-4 of the Charter, pertaining to the specific qualifications of administrative heads of departments, to be inserted and to read as follows:

**"Section 6-4. Specific Qualifications of Administrative Heads of Departments. In addition to any qualifications set forth in this charter, specific qualifications for administrative heads appointed by the mayor may be established by the council by ordinance."**

2. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 3-8, pertaining to restrictions on the Council and Council members, be amended to read as follows:



**“Section 3-8. Restrictions on Council and Council Members.**

1. [Neither] Unless otherwise provided in this charter, neither the council nor any of its members shall, in any manner, dictate the appointment or removal of any officer or employee appointed by the mayor or by the mayor's subordinates.

2. Neither the council nor its members shall give orders to any county employees or county officers other than those appointed pursuant to Section 3-7 or Article 5, either publicly or privately. Any willful violation of the provisions of this subsection by a member of the council shall be sufficient grounds for the councilmember's removal from office by impeachment.”;

3. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 6-2 of the Charter, pertaining to the appointment and removal of officers and employees, be amended to read as follows:

**“Section 6-2. Appointment and Removal of Officers and Employees.**

1. The administrative head of a department may not appoint more than the staff for which appropriations have been made by the council.

2. No appointing authority shall appoint any person to any office or position exempted from civil service until satisfied by proper investigation that the person to be appointed is fully qualified by experience and ability to perform the duties of the office or position.

3. The term of office of any administrative head of a department who is appointed by the mayor[, including the corporation counsel and the prosecuting attorney,] shall end with the term of office of the mayor, except that any such administrative head may be earlier removed as provided for in this charter. Such officers shall not hold over more than sixty (60) days after their respective terms of office, and shall immediately vacate their respective offices at the end of the 60-day period or upon the appointment of a successor in accordance with this charter, whichever occurs first.

4. The mayor shall have the authority to appoint, on a temporary basis, an administrative head of any department, provided that such department is one where the administrative head is appointed by the mayor.

5. Within sixty (60) days of taking office, or within sixty (60) days after a vacancy is created, the mayor shall appoint the managing director, corporation counsel, [and] prosecuting attorney, director of finance, director of public works, director of parks and recreation, planning director, director of housing and human concerns, director of water supply, director of transportation, and director of environmental management, with written notice of the appointment to the council. The council shall confirm or deny the [confirmation] appointment within sixty (60) days after receiving notice of the appointment by the mayor. If the council does not act within the 60-day period, the appointment shall be deemed to be confirmed. The [corporation counsel and prosecuting attorney] appointee shall take office upon appointment by the mayor but shall not continue in office if the council denies [confirmation.] the appointment. If the appointment is [not confirmed] denied by the council, the mayor shall make a new appointment within sixty (60) days of the council's denial, and the council shall confirm or deny within sixty (60) days after receiving notice of the new appointment by the mayor. If the council does not act within the 60-day period, the appointment shall be deemed to be confirmed.”;

4. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-1.2 of the Charter, pertaining to the Managing Director, be amended to read as follows:

**“Section 8-1.2. Managing Director.** The managing director shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The managing director shall have had a minimum of five years of experience in an administrative capacity, either in public or private business, or both.”;

5. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-2.2 of the Charter, pertaining to the Corporation Counsel, be amended to read as follows:

**“Section 8-2.2. Corporation Counsel.** The corporation counsel shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The corporation counsel shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least [three] five years.”;

6. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-3.2 of the Charter, pertaining to the Prosecuting Attorney, be amended to read as follows:

**“Section 8-3.2. Prosecuting Attorney.** The prosecuting attorney shall be appointed by the mayor with the approval of the council and may be removed by the mayor with the approval of the council. The prosecuting attorney shall be an attorney licensed to practice and in good standing before the Supreme Court of the State and shall have engaged in the practice of law for at least [three] five years.”;

7. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-4.2 of the Charter, pertaining to the Director of Finance, be amended to read as follows:

**“Section 8-4.2. Director of Finance.** The director of finance shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of finance shall have had a minimum of five years of experience in a public or private financial position, at least three [years] of which shall have been in an administrative capacity.”;

8. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-5.2 of the Charter, pertaining to the Director of Public Works, be amended to read as follows:

**“Section 8-5.2. Director of Public Works.** The director of public works shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of public works shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

9. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-6.2 of the Charter, pertaining to the Director of Parks and Recreation, be amended to read as follows:

**“Section 8-6.2. Director of Parks and Recreation.** The director of parks and recreation shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of parks and recreation shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

10. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-8.2 of the Charter, pertaining to the Planning Director, be amended to read as follows:

**“Section 8-8.2. Planning Director.** The planning director shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The planning director shall have had a minimum of five years of experience in the field of planning, at least three of which shall have been in an administrative capacity[.], either in public service or private business, or both.”;

11. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-10.2 of the Charter, pertaining to the Director of Housing and Human Concerns, be amended to read as follows:

**“Section 8-10.2. Director of [the Department of] Housing and Human Concerns.** The director of [the department of] housing and human concerns shall be appointed by the mayor with the approval of the council and

may be removed by the mayor. The director of [the department of] housing and human concerns shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

12. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-11.5 of the Charter, pertaining to the Director and Deputy Director of Water Supply, be amended to read as follows:

**“Section 8-11.5. Director and Deputy Director of Water Supply.** The director of [the department of] water supply shall be appointed by the mayor with the approval of the council, and may be removed by the mayor with the approval of the council. The director of [the department of] water supply shall have had a minimum of five years of experience in a management capacity, either in public service or private business, or both. The deputy director of [the department of] water supply shall be appointed by the mayor and may be removed by the mayor. The director or deputy director of [the department of] water supply shall be a registered engineer.”;

13. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-14.2 of the Charter, pertaining to the Director of Transportation, be amended to read as follows:

**“Section 8-14.2. Director of Transportation.** The director of transportation shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of transportation shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

14. That pursuant to Section 14-1(1) of the Charter, it hereby proposes that Section 8-15.2 of the Charter, pertaining to the Director of Environmental Management, be amended to read as follows:

**“Section 8-15.2. Director of Environmental Management.** The director of environmental management

**Resolution No. 16-96**

shall be appointed by the mayor with the approval of the council and may be removed by the mayor. The director of environmental management shall have had a minimum of five years of experience in an administrative capacity, either in public service or private business, or both.”;

15. That material to be repealed is bracketed and new material underscored;

16. That the County Clerk prepare the necessary ballot for presentation to the voters at the next general election;

17. That, pursuant to Section 14-2(1) of the Charter, it hereby proposes that the following question be placed on the next general election ballot:

“Shall the Charter be amended to require Council approval of the Mayor’s appointment of the Managing Director, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Environmental Management and to allow additional qualifications for department directors to be established by ordinance?”;

18. That, pursuant to Section 14-2(2) of the Charter, the County Clerk shall publish the proposed amendment in a newspaper of general circulation;

19. That, pursuant to Section 14-2(3) of the Charter, after approval by the majority of the voters voting on the proposed amendment and after official certification of such result, the amendment proposed shall take effect on January 2, 2019; and

20. That certified copies of this resolution be transmitted to the Mayor and the Corporation Counsel.

**Resolution No.** 16-96

APPROVED AS TO FORM AND LEGALITY

A handwritten signature in black ink, appearing to be a stylized 'M' or 'J' with a large loop, positioned above a horizontal line.

Department of the Corporation Counsel  
County of Maui  
2014-2966

PIA-10(14) PAF 16-130 Reso Proposed Charter  
Amendment (Dept Director Appointments)

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that RESOLUTION NO. 16-96 was passed on Second and Final Reading by the Council of the County of Maui, State of Hawaii, on the 5th day of August, 2016, by the following vote:

MEMBERS	Michael B. WHITE Chair	Donald S. GUZMAN Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	G. Riki HOKAMA	Michael P. VICTORINO
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Excused

  
COUNTY CLERK

Passed First Reading on July 15, 2016



**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

July 15, 2016

**Committee**  
**Report No. 16-110**

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy and Intergovernmental Affairs Committee, having met on March 14, 2016, May 23, 2016, June 1, 2016, June 27, 2016, June 29, 2016 (reconvene), and July 5, 2016 (reconvene), makes reference to following:

1. County Communication 09-229, from Michael J. Molina, Chair, Committee of the Whole, relating to proposed amendments to the Revised Charter of the County of Maui (1983), as amended.
2. Correspondence dated June 13, 2016, from Committee Chair Michael P. Victorino, transmitting a proposed resolution entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS, ALLOW THE COUNCIL TO INITIATE REMOVAL OF DEPARTMENT DIRECTORS, AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter shall be amended to: (1) require Council approval of the Mayor's appointment and removal of department directors; (2) allow the Council to remove department directors by a two-thirds vote of its entire membership; and

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

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**Committee**  
**Report No. 16-110**

(3) allow additional qualifications for department directors to be established by ordinance.

The proposed resolution was intended to combine elements of the following proposals relating to the appointment, removal, and qualifications of department directors appointed by the Mayor:

1. A proposed resolution, transmitted by County Communication 14-313, from Council Vice-Chair Robert Carroll, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, ALLOWING THE COUNCIL TO INITIATE REMOVAL OF THE CORPORATION COUNSEL."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to allow the Council to remove the Corporation Counsel by resolution approved by a two-thirds vote of the entire Council with the approval of the Mayor.

2. A proposed resolution, transmitted by County Communication 15-305, from Councilmember Riki Hokama, entitled "PROPOSING AN AMENDMENT TO THE CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to require Council approval of the Mayor's appointments of department directors.

3. A revised proposed resolution, attached to correspondence dated April 21, 2016, from the First Deputy Corporation

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

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**Committee**  
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Counsel, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS."

The purpose of the revised proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to require Council approval of the Mayor's appointment of department directors.

4. A proposed resolution, transmitted by correspondence dated April 28, 2016, from Council Vice-Chair Don S. Guzman, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF THE DIRECTOR OF FINANCE."

The purpose of the proposed resolution is to place on the next General Election ballot the question of whether the Charter should be amended to provide for: (1) Council approval and removal of the Director of Finance; and (2) written notice to the Council from the Mayor within 60 days of a vacancy of the Director of Water Supply and the Director of Finance.

Your Committee notes Article 14 of the Charter sets forth procedures related to amending the Charter. The Council, by resolution adopted after two readings on separate days and passed by a vote of six or more members, may place a Charter amendment question on the ballot at the next General Election.

Your Committee notes the Charter provides for a process by which the Council shall confirm or deny the confirmation of the Mayor's appointments of the Corporation Counsel, Prosecuting Attorney, and Director of Water Supply, but no such process exists for the

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

Page 4

**Committee**  
**Report No. 16-110**

appointments of other department directors, even though they are also charged with responsibilities that warrant the Council having approval authority.

Your Committee further notes the Charter currently allows the Mayor to remove the following directors with the Council's approval: Corporation Counsel, Prosecuting Attorney, and Director of Water Supply. In addition, the Charter allows the Mayor to unilaterally remove the following department directors: Managing Director, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Environmental Management.

Your Committee noted the Council possessing the authority to remove some department directors would improve the balance of power between the executive and legislative branches.

Your Committee discussed the need for the Council to have approval authority for all of the Mayor's appointments of department directors to ensure transparency in the appointment process and the appointment of qualified candidates.

Your Committee approved revisions to the proposed resolution to require Council approval of the Mayor's appointment of the following department directors: Managing Director, Director of Finance, Director of Public Works, Director of Parks and Recreation, Planning Director, Director of Housing and Human Concerns, Director of Transportation, and Director of Environmental Management.

Your Committee also approved revisions to provide that the Managing Director, Corporation Counsel, Prosecuting Attorney, and Director of Finance may be removed by the Mayor or the Council by a two-thirds vote of its entire membership following consultation with the Mayor. Your Committee recognized the need for these officials to be accountable to both the executive and legislative branches.

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

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**Committee**  
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Your Committee noted the Charter sets forth general qualifications for department directors, but determined the Council should be allowed to establish more specific qualifications by ordinance. Your Committee approved a revision for that purpose.

Your Committee approved a revision to the proposed resolution to make the effective date January 2, 2019, to coincide with the beginning of the term of the next Mayor.

Your Committee voted 7-0 to recommend passage of the revised proposed resolution on first reading. Committee Chair Victorino and members Baisa, Carroll, Cochran, Guzman, Hokama, and White voted "aye." Committee Vice-Chair Couch and member Crivello were excused.

Your Committee voted 5-0 to recommend filing of County Communications 14-313 and 15-305, and correspondence dated April 28, 2016. Committee Chair Victorino and members Cochran, Guzman, Hokama, and White voted "aye." Committee Vice-Chair Couch and members Baisa, Carroll, and Crivello were excused.

Your Committee is in receipt of a revised proposed resolution, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS; ALLOW THE COUNCIL OR THE MAYOR TO REMOVE THE MANAGING DIRECTOR, DIRECTOR OF FINANCE, CORPORATION COUNSEL, AND PROSECUTING ATTORNEY; AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE," incorporating your Committee's recommended revisions and nonsubstantive revisions.

Your Policy and Intergovernmental Affairs Committee  
RECOMMENDS the following:

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY AND INTERGOVERNMENTAL**  
**AFFAIRS COMMITTEE**

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**Committee**  
**Report No. 16-110**

1. That Resolution 16-96, attached hereto, entitled "PROPOSING AN AMENDMENT TO THE REVISED CHARTER OF THE COUNTY OF MAUI (1983), AS AMENDED, TO REQUIRE COUNCIL APPROVAL OF THE MAYOR'S APPOINTMENT OF DEPARTMENT DIRECTORS; ALLOW THE COUNCIL OR THE MAYOR TO REMOVE THE MANAGING DIRECTOR, DIRECTOR OF FINANCE, CORPORATION COUNSEL, AND PROSECUTING ATTORNEY; AND ALLOW ADDITIONAL QUALIFICATIONS FOR DEPARTMENT DIRECTORS TO BE ESTABLISHED BY ORDINANCE," be PASSED ON FIRST READING and be ORDERED TO PRINT;
2. That County Communication 14-313 be FILED;
3. That County Communication 15-305 be FILED; and
4. That correspondence dated April 28, 2016, be FILED.

COUNCIL OF THE COUNTY OF MAUI  
**POLICY AND INTERGOVERNMENTAL  
AFFAIRS COMMITTEE**

Page 7

**Committee**  
**Report No. 16-110**

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
MICHAEL P. VICTORINO, Chair

pia:cr:16010(1, 7, 9, 14)aa:scb

# COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

## CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 16-110 were adopted by the Council of the County of Maui, State of Hawaii, on the 15th day of July, 2016, by the following vote:

MEMBERS	Michael B. WHITE Chair	Donald S. GUZMAN Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	S. Stacy CRIVELLO	G. Riki HOKAMA	Michael P. VICTORINO
ROLL CALL	Aye	Excused	Aye	Aye	Aye	Aye	Aye	Aye	Aye

Resolution No. 16-96 including its title was amended prior to passage on First Reading.

  
COUNTY CLERK



ORDINANCE NO. 3958

BILL NO. 54 (2012)

A BILL FOR AN ORDINANCE AMENDING CHAPTER 1.14, MAUI COUNTY CODE,  
RELATING TO PUBLICATION OF THE MAUI COUNTY CHARTER

BE IT ORDAINED BY THE PEOPLE OF THE COUNTY OF MAUI:

SECTION 1. Section 1.14.020, Maui County Code, is amended to read as follows:

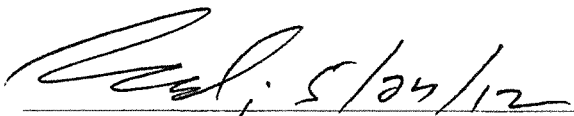
**“1.14.020 Duties.** In performing the function of revising and publishing county laws, the duties of the revisor of county laws, in order of priority, shall be:

- A. To publish and distribute supplements to the Maui County Code;
- B. To publish and distribute replacement volumes of the Maui County Code;
- C. [To compile, publish, and distribute the following as appendices to the Maui County Code:
  1. County charter;
  2. Rules of the council; and
  3. Rules and regulations promulgated by county agencies.] To compile, publish, and distribute the Maui County Charter in its entirety following any special or general election on any proposed charter, or amendment thereto, to include all amendments adopted.”

SECTION 2. Material to be repealed is bracketed. New material is underscored. In printing this bill, the County Clerk need not include the brackets, the bracketed material, or the underscoring.

SECTION 3. This ordinance shall take effect upon its approval.

APPROVED AS TO FORM AND LEGALITY:



Edward S. Kushi, Jr.  
Department of the Corporation Counsel  
County of Maui  
S:\ALL\ESK\Ords\1.14.020.doc

WE HEREBY CERTIFY that the foregoing BILL NO. 54 (2012)

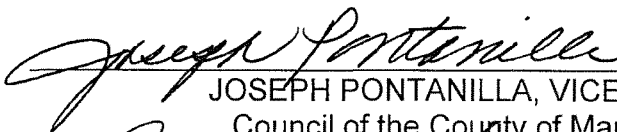
1. Passed FINAL READING at the meeting of the Council of the County of Maui, State of Hawaii, held on the 15th day of June, 2012, by the following vote:


Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
Excused	Aye	Aye	Aye	Aye	Aye	Aye	Excused	Aye

2. Was transmitted to the Mayor of the County of Maui, State of Hawaii, on the 15th day of June, 2012.

DATED AT WAILUKU, MAUI, HAWAII, this 15th day of June, 2012.

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2012 JUN 15 PM 2:05  
OFFICE OF THE MAYOR

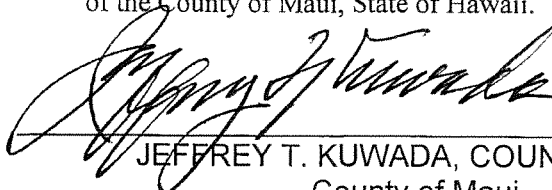
  
JOSEPH PONTANILLA, VICE-CHAIR  
Council of the County of Maui

  
JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

THE FOREGOING BILL IS HEREBY APPROVED THIS 18 DAY OF June, 2012.

  
ALAN M. ARAKAWA, MAYOR  
County of Maui

I HEREBY CERTIFY that upon approval of the foregoing BILL by the Mayor of the County of Maui, the said BILL was designated as ORDINANCE NO. 3958 of the County of Maui, State of Hawaii.

  
JEFFREY T. KUWADA, COUNTY CLERK  
County of Maui

Passed First Reading on June 6, 2012.

Effective date of Ordinance June 18, 2012

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OFFICE OF THE  
COUNTY CLERK

I HEREBY CERTIFY that the foregoing is a true and correct copy of Ordinance No. 3958, the original of which is on file in the Office of the County Clerk, County of Maui, State of Hawaii.

Dated at Wailuku, Hawaii, on

\_\_\_\_\_  
County Clerk, County of Maui

**COUNCIL OF THE COUNTY OF MAUI**  
**POLICY COMMITTEE**

June 6, 2012

**Committee**  
**Report No. 12-57**

---

Honorable Chair and Members  
of the County Council  
County of Maui  
Wailuku, Maui, Hawaii

Chair and Members:

Your Policy Committee, having met on May 23, 2012, makes reference to County Communication 12-93, from Councilmember Donald G. Couch, Jr., transmitting a proposed bill entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 1.14, MAUI COUNTY CODE, RELATING TO PUBLICATION OF THE MAUI COUNTY CHARTER".

The purpose of the proposed bill is to require that the County Clerk compile, publish, and distribute the Maui County Charter following any general or special election on any proposed Charter, or amendments thereto, to include all amendments adopted.

Your Committee notes that Councilmember Couch initiated the proposed bill to address concerns raised by the Charter Commission about the timeliness of incorporating Charter amendments into a single, cohesive document upon adoption. The Charter Commission proposed that the voters be presented with the question of whether the Charter should be amended to require that the Charter be revised and published to include "all new significant amendments".

By Policy Committee Report 12-51, adopted on April 26, 2012, the Council recommended to the Charter Commission that the proposed Charter amendment be deleted. The Council noted that such a proposal did not merit an amendment to the County's constitutional document. Rather, the Council suggested that it would work with the County Clerk to adopt an appropriate policy to have Charter amendments integrated in a timely manner. This bill represents that policy statement.

The County Clerk indicated that, if the proposed bill is enacted, the Office of the County Clerk would make an integrated copy of the Charter available to the public in both printed and electronic forms.

Your Committee voted 5-0 to recommend passage of the proposed bill on first reading and filing of the communication. Committee Chair Hokama, Vice-Chair Carroll, and members Baisa, Couch, and White voted "aye". Committee members Cochran, Mateo, Pontanilla, and Victorino were excused.

COUNCIL OF THE COUNTY OF MAUI  
**POLICY COMMITTEE**

June 6, 2012  
Page 2

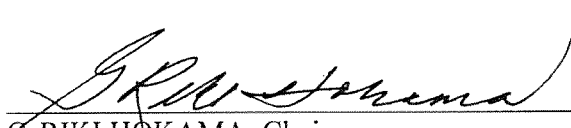
**Committee**  
**Report No.**     12-57

Your Committee is in receipt of a revised proposed bill, approved as to form and legality by the Department of the Corporation Counsel, incorporating nonsubstantive revisions.

Your Policy Committee RECOMMENDS the following:

1. That Bill 54 (2012), as revised herein and attached hereto, entitled "A BILL FOR AN ORDINANCE AMENDING CHAPTER 1.14, MAUI COUNTY CODE, RELATING TO PUBLICATION OF THE MAUI COUNTY CHARTER", be PASSED ON FIRST READING and be ORDERED TO PRINT; and
2. That County Communication 12-93 be FILED.

This report is submitted in accordance with Rule 8 of the Rules of the Council.

  
\_\_\_\_\_  
G. RIKI HOKAMA, Chair

## COUNCIL OF THE COUNTY OF MAUI

WAILUKU, HAWAII 96793

### CERTIFICATION OF ADOPTION

It is HEREBY CERTIFIED that the recommendations contained in COMMITTEE REPORT NO. 12-57 were adopted by the Council of the County of Maui, State of Hawaii, on the 6th day of June, 2012, by the following vote:

MEMBERS	Dennis A. MATEO Chair	Joseph PONTANILLA Vice-Chair	Gladys C. BAISA	Robert CARROLL	Eleanora COCHRAN	Donald G. COUCH, JR.	G. Riki HOKAMA	Michael P. VICTORINO	Michael B. WHITE
ROLL CALL	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye	Aye

  
COUNTY CLERK

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M I N U T E S

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POLICY COMMITTEE

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COUNCIL OF THE COUNTY OF MAUI

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COUNCIL CHAMBER, 8TH FLOOR

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WAILUKU, MAUI, HAWAII

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MAY 23, 2012

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Transcribed by: Tonya McDade, CSR, RPR, CRR  
Certified Shorthand Reporters Maui  
2145 Wells Street, Suite 302  
Wailuku, Hawaii 96793  
(808)244-3376  
reporters@csrmaui.com

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1 MOTION CARRIED

2 ACTION: Recommending ADOPTION of revised resolution and  
3 FILING of communication.

4 CHAIR HOKAMA: Chief Hudson, we thank you very  
5 much for your presence.

6 MR. HUDSON: Thank you, Chair.

7 CHAIR HOKAMA: Good luck continuing on the  
8 successful construction of our new public safety  
9 facility.

10 ITEM POL-49: PUBLICATION OF THE MAUI COUNTY CHARTER (CC  
11 12-93)

12 CHAIR HOKAMA: Members, next we shall move on  
13 to Policy Item 49. POL-49 comes under the Committee  
14 heading of Publication of Maui County Charter. We do  
15 have with us First Deputy Kushi. And, if need be, we  
16 shall have either our Clerk, County Clerk, or our Deputy  
17 County Clerk. Do you folks want -- would --

18 COUNCIL MEMBER: Please.

19 CHAIR HOKAMA: -- like the presence of  
20 Mr. Kuwada?

21 COUNCIL MEMBER: Please.

22 CHAIR HOKAMA: Okay. We shall take a very  
23 short recess, two minutes, to get the County Clerk  
24 present at the Committee. Recess. ...(gavel)...

25

1 RECESS: 2:10 p.m.

2 RECONVENE: 2:15 p.m.

3 CHAIR HOKAMA: ...(gavel)... The Policy  
4 Committee shall re -- come back to open session.  
5 Members, we are now on Policy Item 49, the heading of  
6 this item is Publication of the Maui County Charter. We  
7 do have, again, besides Mr. Kushi, Mr. Jeff Kuwada, the  
8 Clerk of the County of Maui. And I'll ask Mr. Couch if  
9 he has some additional comments he would like to share  
10 since this is one of his -- I believe he helped initiate  
11 the idea. So, Mr. Couch, any thoughts from you?

12 COUNCILMEMBER COUCH: Thank you, Mr. Chair.  
13 And, yeah, you know, as one of the things that the  
14 Charter Commission brought up to us during our  
15 deliberations in the middle of Budget, they had wanted  
16 to make a Charter amendment to say we -- we have to  
17 print the Charter after -- every time it changes. I  
18 thought that that was a bit strong or a place that it  
19 shouldn't be. It shouldn't be in the Charter. If -- if  
20 we need to do this, it would be good to be an ordinance.  
21 And we have an ordinance about publishing and -- and  
22 distributing Charter and -- and everything else, so I  
23 just ask to have the language be changed a little bit so  
24 that, every two years, if there's a Charter amendment  
25 that happens, that the Charter get reprinted.



1                   And the reason I asked to have Mr. Kuwada here  
2           is to find out if this language works for -- for his  
3           office, A; and, B, the question I have, too, is -- is  
4           should there be a minimum in there, or can we trust  
5           that, you know, a small amount would be printed. These  
6           days, as we move more and more towards paperless, I  
7           wouldn't wanna put a huge minimum, but I also wouldn't  
8           want -- I don't know. It -- it's one of those  
9           situations where I'd like to hear Mr. Kuwada's thoughts  
10          on that if I could.

11                   CHAIR HOKAMA: Thank you very much.  
12          Mr. Kuwada, as our Clerk, do you have any comments you'd  
13          like to share with us?

14                   MR. KUWADA: Thank you, Mr. Chairman. In  
15          answer to Councilmember Couch's question -- and -- and,  
16          please, if I am not addressing your question to your  
17          satisfaction, let me know, but there -- there is a --  
18          presently, the practice of, when we publish hard copies  
19          of the Charter -- the last time we did it, I'm -- I am  
20          informed that we published or printed 1,000 copies.  
21          Okay. And we still have quite a few left in our  
22          storeroom. And we do, from time to time, receive  
23          requests from members of the public for a copy of the  
24          Charter, which we provide them.

25                   With respect to the future, there is -- I'd

1       like to bring to the attention of this Committee that  
2       there is a portion of the Maui County Code that is  
3       toward the beginning of the Code and it begins -- this  
4       is after the foreword, there is then a section called  
5       Supplement History Table. And then there is a reserved  
6       portion of the Charter -- excuse me -- of the Code which  
7       is entitled Charter. And it would be entirely possible  
8       to ask our Code publisher to publish the Charter in that  
9       section that is presently reserved.

10               So, yeah. And -- you know, and the next time  
11       we print hard copies of the Charter -- I believe 1,000  
12       copies were printed because that was the minimum order.  
13       And so we may attempt to print less; however, we may be  
14       constrained by the minimum amount required by the -- the  
15       printer.

16               COUNCILMEMBER COUCH: Yeah. And --

17               CHAIR HOKAMA: Mr. Couch?

18               COUNCILMEMBER COUCH: Oh, go ahead.

19               CHAIR HOKAMA: No. I was just gonna -- before  
20       I open up to -- to general Committee discussion and  
21       questioning, I was just gonna allow Mr. Kushi, if he had  
22       any comments, from the Department of Corporation  
23       Counsel, that they may wish to comment on at this time.  
24       Mr. Kushi, anything you wish to comment on at this time,  
25       please?

1 MR. KUSHI: No comment, Mr. Chair.

2 CHAIR HOKAMA: Okay. Thank you. Mr. Couch,  
3 questions, comments?

4 COUNCILMEMBER COUCH: Yeah. I just wanted to  
5 make sure that -- that the language is in here 'cause we  
6 have -- we changed a little bit. It says -- we took out  
7 some stuff and then added more. And -- and the reason,  
8 again, is because we've gotten a few complaints about  
9 the -- the inserts. While I understand we do that for  
10 the County Code, because it's kind of in a binded copy,  
11 so it's easy to do that, I've had people come up and  
12 say, well, it dropped or whatever. So I was just  
13 wanting to circumvent -- not necessarily circumvent, but  
14 to avoid having to have this to be a Charter amendment  
15 as opposed to an ordinance that we can, if necessary, if  
16 there's minimum issues, that we can switch back and  
17 forth. So --

18 CHAIR HOKAMA: Okay. Thank you.

19 COUNCILMEMBER COUCH: That's the intent of  
20 this.

21 CHAIR HOKAMA: Thank you. Ms. Baisa?

22 COUNCILMEMBER BAISA: Chair, I'm pretty much  
23 coming from the same point of view. You know, it's kind  
24 of sad that we have to make this a Charter amendment.  
25 It's kinda -- it's kinda, to me, a management issue.

1       You know, you have a new version of something, so,  
2       obviously, you would want to have it republished. And I  
3       don't see it as a major expense. I mean, it's not like  
4       we buying a \$700,000 machine or something, you know.  
5       This is a publishing. And, nowadays, with publishing  
6       what it is, I think you can -- you know, this is -- this  
7       is not such a big deal.

8               CHAIR HOKAMA: Right.

9               COUNCILMEMBER BAISA: But as far as the number  
10       of copies, you know, I'm kind of interested in hearing  
11       that we have a supply of 'em. I've been here six years  
12       and I have had access to one copy. I don't have one on  
13       the floor and one in my office, I only have one, 'cause  
14       I was told we couldn't get anymore. So if they're  
15       there, then maybe we ought to be a little more generous  
16       with them. And maybe the public would like to see these  
17       things. After all, it is the most important document of  
18       the County. And so maybe we could make them available  
19       to groups that are very concerned with Government,  
20       interested in Government, and pass them out. 'Cause if  
21       we're gonna get a new one, well, we might as well get  
22       rid of the old ones and familiarize people with what is  
23       in it. It's a good teaching tool, if nothing else. You  
24       know, when I pull it out and share with constituents  
25       things in it, like -- you know, you bring up often, "the

1 Charter says, the Charter says." Most people don't  
2 know. And just having that little hard document in your  
3 hand is really helpful. So I, for one, would really  
4 like to see this become a -- a document that is much  
5 more available. Thank you.

6 CHAIR HOKAMA: Okay. Thank you. Mr. White?

7 COUNCILMEMBER WHITE: Thank you, Chair. Those  
8 are all very good comments. And it certainly shouldn't  
9 be something that we hold back on because of the cost of  
10 printing 1,000 copies or 500 copies, or whatever the --  
11 the printer would require.

12 I'm -- I'm more concerned that, on the County  
13 website, which is the easiest way to get a copy of the  
14 Charter, we have the 2003 Charter, but then we also have  
15 the 2006 amendments and the 2010 amendments. And since  
16 2006 and 2010, we haven't taken the time to blend them  
17 into one Charter. And I -- I just -- I feel that should  
18 be our focus. Because a lot more people can have access  
19 to it online than in the hard copy. So as we're moving  
20 forward to print a copy, let's -- let's take the PDFs  
21 that we've got in our files online and put 'em together  
22 so we have one Charter.

23 CHAIR HOKAMA: Very good point, Mr. White.  
24 Very good point. Mr. Carroll, any -- any thoughts you'd  
25 like to share?

1                   VICE-CHAIR CARROLL: Just that I would like to  
2           see it more available. I asked for another copy, too,  
3           when I first came because I wanted to have one down  
4           here. And I was told that it wasn't available, that I  
5           already had one, each Member had one copy. I would have  
6           liked to have three of them, actually. So I would hope  
7           that when the dust settles and we can decide what to do  
8           with this, that we have -- that they would be available,  
9           especially to the Council Members and those that really  
10          need 'em. 'Cause I want one up here and I want one in  
11          my office.

12                   Thank you.

13                   CHAIR HOKAMA: Yeah, thank you. We do have,  
14          you know, that's before the Committee, a proposed bill  
15          for an ordinance that would amend Chapter 1.14 of the  
16          Maui County Code. And the way the Chair currently reads  
17          it, you know, the -- the amendment -- or the proposal is  
18          to compile, publish and distribute in its entirety.

19                   You know, Mr. Kuwada, do you feel that this  
20          can take care of both the written document, the hard  
21          copy, as we may call it, as well as ability for your --  
22          your office, your Department to also take care of it  
23          regarding the -- what's online or the internet version?

24                   MR. KUWADA: (Inaudible.)

25                   CHAIR HOKAMA: Or do we need to kinda add that

1 language regarding electronic means or -- or whatnot?

2 MR. KUWADA: No. I -- I don't believe it's  
3 necessary to -- to add any additional language. I  
4 believe the language is sufficient to enable any County  
5 Clerk to, of course, continue with the practice of  
6 publishing the hard copy of the Charter and, also, to  
7 enable the Clerk to make the Charter available  
8 electronically, using our electronic book publisher.

9 CHAIR HOKAMA: Okay. So that would take care  
10 of your comment, Mr. White, that this would also be able  
11 to be done electronically, for those that wish to use  
12 that mode of information gathering.

13 So that being the case, Members, I would say  
14 that the Chair would be recommending to you that we  
15 recommend to Council passage on first reading a proposed  
16 bill for an ordinance entitled A Bill for an Ordinance  
17 Amending Chapter 1.14, Maui County Code, Relating to  
18 Publication of the Maui County Charter, as well as the  
19 filing of Communication 12-93. Mr. Couch, I'd allow you  
20 to make the motion since it's your proposal.

21 COUNCILMEMBER COUCH: So moved, sir.

22 CHAIR HOKAMA: Okay.

23 VICE-CHAIR CARROLL: Second.

24 CHAIR HOKAMA: Thank you. We have a motion  
25 made by Mr. Couch, seconded by our Vice-Chairman,

1 Mr. Carroll.

2 Members, your further motion, I would also ask  
3 that if there are no objections, that you would allow  
4 the Staff to make any non-substantive changes to the  
5 proposed ordinance, if need be, working with Corporation  
6 Counsel.

7 COUNCIL MEMBERS: No objections.

8 COUNCIL MEMBERS VOICED NO OBJECTIONS (excused: EC, DM,  
9 JP, MV).

10 CHAIR HOKAMA: Okay. Thank you. Is there any  
11 further discussion?

12 COUNCILMEMBER COUCH: And file it as well?

13 CHAIR HOKAMA: Yes, we are gonna file the  
14 communication.

15 COUNCILMEMBER COUCH: Okay. Thank you.

16 CHAIR HOKAMA: Okay. Any other discussion,  
17 Members? If not, all in favor the motion, please say  
18 "aye".

19 COUNCIL MEMBERS: "Aye".

20 CHAIR HOKAMA: Opposed, say "no". Motion is  
21 carried with five "ayes"; four "excused", Ms. Cochran,  
22 Mr. Mateo, Mr. Victorino, and Mr. Pontanilla. Thank  
23 you, Members.

24

25



1 VOTE: AYES: Chair Hokama, Vice-Chair Carroll, and  
Councilmembers Baisa, Couch, and White.

2 NOES: None.

3 EXC.: Councilmembers Cochran, Mateo,  
4 Pontanilla, and Victorino.

5 ABSENT: None.

6 ABSTAIN: None.

7 MOTION CARRIED

8 ACTION: Recommending FIRST READING of revised bill and  
FILING of communication.

9  
10 ITEM POL-10(4): PROPOSED CHARTER AMENDMENTS (COUNCIL  
APPROVAL OF THE MAYOR'S APPOINTMENT OF  
11 THE PLANNING DIRECTOR) (CC 09-229;  
CC-11-165)

12 CHAIR HOKAMA: Next, Members, on Policy Item  
13 10(4), you know, Chairman Mateo is not here, again,  
14 being under the weather. And this was one of his  
15 proposals of consideration for the Committee, whether or  
16 not the Committee would like to recommend a Council  
17 approval of the Planning Director. We did have some  
18 earlier discussion at a previous Policy Committee  
19 meeting. And, therefore, at this time, Members -- you  
20 know, it's gonna take all of us present to do any action  
21 today. And so the Chair -- not trying to curtail  
22 discussion or anything, you know, if there is concerns  
23 by any Member, then -- you know, the Chair's position  
24 is, since we got five, we all know what it means, which  
25 means it cannot go forward. And -- and, you know -- and

60 Haw. 324  
Supreme Court of Hawai'i.

Miriam KAHALEKAI et al., Plaintiffs,  
v.  
Nelson DOI, Lieutenant Governor, State of  
Hawaii, et al., Defendants.  
THIRTY-FOUR VOTERS OF the COUNTY OF  
MAUI, Plaintiffs,  
v.  
Nelson DOI, Lieutenant Governor, State of  
Hawaii, et al., Defendants.

Nos. 7216, 7218.  
|  
Feb. 1, 1979.

Original action was instituted to invalidate results of general election insofar as they dealt with certain amendments to State Constitution. The Supreme Court, Menor, J., held that: (1) the vote on an amendment satisfies the requirement of electoral approval where the ballot is in a form which produces a knowing and deliberate expression of voter choice; (2) a ballot is not defective merely because it is mechanically easier for the voter to vote for rather than against any given proposition so long as the ballot language is not misleading or deceptive; (3) a proposed amendment may embrace more than one subject or purpose; (4) the ballot must enable the voters to express their choice on the amendment and be in a form and language which will not mislead or deceive; (5) an amendment will be deemed to have failed ratification when the electorate is not informed of the substantive nature and effect thereof, and (6) failure to inform the public specifically and in detail of stylistic and purely technical changes would not prevent ratification so long as the changes do not alter the sense, meaning or effect of the amendment.

Order accordingly.

Kidwell, J., concurred in part and dissented in part and filed opinion.

West Headnotes (19)

<sup>[1]</sup> **Courts**  
Hawaii

Jurisdiction was vested in Supreme Court by statute to entertain action wherein plaintiffs sought to invalidate results of general election insofar as those results dealt with amendments to State Constitution. Const. art. 15, § 2; HRS §§ 11-171 et seq., 602-5(7).

2 Cases that cite this headnote

<sup>[2]</sup> **Courts**  
Hawaii

Supreme Court is vested with jurisdiction to ascertain and determine validity of matter of submission and ratification of changes in State Constitution. Const. art. 15, § 2; HRS §§ 11-171 et seq., 602-5(7).

Cases that cite this headnote

<sup>[3]</sup> **Constitutional Law**  
Proof Beyond a Reasonable Doubt

Amendments to State Constitution ratified by electorate will be upheld unless they can be shown to be invalid beyond a reasonable doubt. Const. art. 15, § 2.

2 Cases that cite this headnote

<sup>[4]</sup> **Constitutional Law**  
Post-Election Challenges or Review

The burden of showing, beyond a reasonable doubt, the invalidity of a constitutional amendment which the people have adopted at a general election is on the party challenging the amendment. Const. art. 15, § 2.

2 Cases that cite this headnote

[5] **Constitutional Law**  
⚡Ballots in General

Where the ballot used in a constitutional ratification election is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval. Const. art. 15, § 2.

4 Cases that cite this headnote

[6] **Constitutional Law**  
⚡Ballots in General

Fact that, mechanically, it was easier for a voter to ratify rather than to reject any given proposition did not render ballot so irregular as to require invalidation of results of general election insofar as they dealt with constitutional amendments. Const. art. 15, § 2.

1 Cases that cite this headnote

[7] **Constitutional Law**  
⚡Ballots in General

A ballot used in a constitutional ratification election is not defective merely because it is mechanically easier for the voter to vote for rather than against any given proposition so long as the ballot language is not misleading or deceptive. Const. art. 15, § 2.

Cases that cite this headnote

[8] **Constitutional Law**  
⚡Initiatives

A determination of what inducements motivated voters in the adoption of a proposed

constitutional amendment is outside the scope of any judicial examination where the language and meaning of the amendment are clear and the ballot is neither misleading nor deceptive. Const. art. 15, § 2.

Cases that cite this headnote

[9] **Constitutional Law**  
⚡Single or Multiple Subjects

There is no limitation, absent a provision to contrary, on number of subjects that may be included in a proposed constitutional amendment. Const. art. 3, § 15.

Cases that cite this headnote

[10] **Constitutional Law**  
⚡Ballots in General

Authority of a constitutional convention to determine manner in which proposed amendments are to be submitted to vote of electorate is subject only to limitation that ballot must enable voters to express their choice on amendments presented and be in a form and language which will not mislead or deceive voter. Const. art. 3, § 15.

1 Cases that cite this headnote

[11] **Constitutional Law**  
⚡Ballots in General

Fact that electorate was presented with an array of complex constitutional amendments, to which they were asked to address themselves, does not create a presumption that form of ballot was misleading or defective and does not open door to judicial inquiry into state of mind of voters. Const. art. 3, § 15.

Cases that cite this headnote

[12] **Constitutional Law**  
⚡Particular Amendments

Prohibition against incorporation of different subjects into a single ballot proposition was not violated by reason of fact that constitutional amendments contained a proposal to raise minimum amount for jury trials in civil cases as well as a proposal to guarantee an accused, charged with a serious criminal offense, a jury of 12 persons. Const. art. 3, § 15.

Cases that cite this headnote

[13] **Constitutional Law**  
⚡Notice to Voters; Publication

Though there is no expressed publication requirement, a constitutional convention is nevertheless under a duty to adequately inform electorate of contents and effect of proposed amendments, and electorate bears a corresponding burden of educating and familiarizing themselves with contents and effect of amendments prior to going to polls to cast their ballots. Const. art. 15, § 3.

Cases that cite this headnote

[14] **Constitutional Law**  
⚡Submission to Popular Vote; Initiative

Where information disseminated to public is neither deceptive nor misleading, and public is given sufficient time within which to familiarize themselves with contents and effect of proposed constitutional amendments, they will be presumed to have cast informed ballots. Const. art. 15, § 3.

Cases that cite this headnote

[15] **Constitutional Law**  
⚡Submission to Popular Vote; Initiative

Amendatory deletions and additions of a substantive nature that were not mentioned in both informational booklet and newspaper supplement disseminated statewide in connection with proposed constitutional amendments were omissions which deprived electorate of necessary information concerning proposed amendments and, as such, were fatal to those amendments. Const. art. 15, § 3.

Cases that cite this headnote

[16] **Constitutional Law**  
⚡Notice to Voters; Publication  
**Constitutional Law**  
⚡Summaries, Explanatory Statements, and Statements of Purpose

That full text of proposed constitutional amendment was not contained in newspaper supplement disseminated statewide was not fatal to amendment as long as summaries of proposal in both informational booklet and supplement fairly and sufficiently advised voter of substance and effect of proposed amendment. Const. art. 15, § 3.

2 Cases that cite this headnote

[17] **Constitutional Law**  
⚡Constitutional Conventions

Failure of constitutional convention to inform public specifically and in detail of stylistic and purely technical changes embodied in a proposed amendment will not prevent ratification of proposal so long as changes do not alter sense, meaning or effect of constitutional provisions. Const. art. 15, § 3.

3 Cases that cite this headnote

[18] **Constitutional Law**

☞ State Constitutions

Proposed constitutional amendment wherein electorate was asked to approve certain unspecified “changes [in] the Constitution whether subject may now be unconstitutional or unnecessary under the Constitution of United States” was too broad and vague a request to fulfill mandate of an informed electorate. Const. art. 15, § 3.

Cases that cite this headnote

[19] **Constitutional Law**

☞ Submission to Popular Vote; Initiative

However valid the reasons of the constitutional convention for proposing the amendments may have been, it was for the people, based upon adequate information, to determine whether and to what extent the organic law of the state was to undergo revision. Const. art. 15, § 3.

Cases that cite this headnote

**\*\*545** *Syllabus by the Court*

1. **\*325** The supreme court is vested with jurisdiction to ascertain and to determine the validity of the manner of submission and the ratification of changes in the state constitution.

2. Constitutional amendments ratified by the electorate are presumed to be valid and the amendments as adopted will be upheld unless they can be shown to be invalid beyond a reasonable doubt.

**\*\*546** 3. The party challenging the results of the election

bears the burden of showing, beyond a reasonable doubt, the invalidity of a constitutional amendment which the people have adopted at a general election.

4. Where the ballot used in a constitutional ratification election is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval.

5. A ballot is not defective merely because it is mechanically easier for the voter to vote for rather than against any given proposition, so long as the ballot language is not misleading or deceptive.

6. A determination of what inducements motivated voters in the adoption of a proposed amendment is outside the scope of any judicial examination where the language and meaning of a constitutional amendment are clear and the ballot is neither misleading nor deceptive.

7. An amendment proposed by a constitutional convention may embrace more than one subject or purpose where the constitution authorizes the convention, in its discretion, to provide for the manner of its submission.

8. **\*326** The authority of a constitutional convention to determine the manner in which proposed amendments are to be submitted to the vote of the electorate is subject only to the limitation that the ballot must enable the voters to express their choice on the amendments presented and be in a form and language which will not mislead or deceive the voter.

9. Where there is no express publication requirement in the constitution, a constitutional convention is nevertheless under a duty to adequately inform the electorate of the contents and effect of the proposed amendments.

10. The electorate bears a corresponding burden of educating and familiarizing themselves with the contents and effect of the amendments prior to going to the polls to cast their ballots.

11. Where the information disseminated to the public is neither deceptive nor misleading, and the public is given sufficient time within which to familiarize themselves with the contents and effect of the proposed amendments, they will be presumed to have cast informed ballots.

12. Where the electorate is not sufficiently informed of the substantive nature and effect of a proposed amendment, such amendment will be deemed to have failed of ratification.

13. Failure by the convention to inform the public specifically and in detail of the stylistic and purely technical changes, embodied in a proposed amendment, will not prevent ratification of the proposal, so long as these changes do not alter the sense, meaning or effect of constitutional provisions.

14. The power to determine whether and to what extent the organic law is to be amended or revised is reserved to the people by the constitution.

#### Attorneys and Law Firms

\*346 Steven B. Songstad, Kahului, for plaintiffs.

James T. Funaki, Honolulu, for defendants William Paty and Karen Iwamoto.

Maria L. Sousa, Deputy Atty. Gen., Honolulu, for defendant Lieutenant Governor Doi.

Daral G. Conklin and Melvin M. M. Masuda, Honolulu, for Hawaii State Bar Association, amicus curiae.

Before RICHARDSON, C. J., OGATA, MENOR and KIDWELL, JJ., and KOBAYASHI, Retired Justice, for the vacancy.

#### Opinion

MENOR, Justice.

This is an original action seeking to invalidate the results of the November 7, 1978 general election dealing with amendments to the State Constitution presented to the electorate for its approval by the 1978 Constitutional Convention. \*327 <sup>1</sup> The lieutenant \*\*547 governor's Computer-Final Report on the results of the election shows that all of the proposed amendments passed by the necessary constitutional margin.<sup>2</sup> At issue, however, is whether the proposed amendments were submitted to the voters in the form and manner required by law.

Following its deliberations, the Convention adopted as the definitive expression of its conclusions a document entitled, "The Constitution of the State of Hawaii With the Amendments Proposed by the Constitutional Convention of 1978." This document was referred to the Convention Committee on Submission and Information. That committee proposed a form of resolution, which was adopted by the Convention (Resolution No. 30), in which it was provided that the proposed amendments be

submitted for ratification at the November 7, 1978 general election, in the form of the ballot attached to the resolution. The attachments to the resolution consisted of the texts of the punch-card ballot and the informational booklet which were subsequently used in the general election.

The punch-card ballot listed 34 proposed amendments by short title. The ballot was divided into Parts A and B. Part A provided for a blanket "yes" or "no" vote on all proposed amendments. Part B provided for a "no" vote on each of the \*328 34 proposed amendments, the listing of which was preceded by a caption: "I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:." Neither the effect of the proposed amendments nor the numbers of the amended articles and sections were set forth in the punch-card ballot. However, the ballot contained, preceding Parts A & B, the following:

"Please read instructions and information in the booklet Which is part of this ballot. The full text of the proposed amendments on the ballot number 1-34 inclusive, is available for inspection in your voting unit." (Emphasis added)

The informational booklet attached to the resolution set forth, under the same numbers and short titles used in the punch-card ballot, brief descriptive material under the words "If adopted, this amendment provides:." With the exception of proposed amendments 24, 25 and 34, article and section numbers were set forth in parenthesis after each short title. For example, the descriptive material with respect to the first proposed amendment was headed:

1. 12 MEMBER JURY: CIVIL;  
CASE AMOUNT (Article I, Section  
13 and 14)

The forms of the ballot and informational booklet, as printed and used in the election,<sup>3</sup> conformed to those attached to the resolution, except that article and section numbers were added, in the informational booklet, after the short titles of proposed amendments 24 and 25. No article or section numbers appeared beside the short title of proposed amendment 34, in either instance.

Copies of the full text of the revised Constitution were distributed to state and municipal officers, including all county clerks, on September 21, 1978. They were also distributed to the main and branch libraries of the state library \*329 system at least two weeks before the election. The availability of the library copies for examination \*\*548 could have been ascertained by a

phone call to the Convention office at a phone number made generally known by newspaper advertisements. No information was distributed to the general public with respect to the availability of the text of the revised Constitution at public libraries; however, a "Con-Con Summary" mailed by the Convention to the household of every registered voter in the State did advise voters that they could obtain exact wording of the amendments from the voter information center located at Convention headquarters in Honolulu.

Having completed its work on the proposed amendments, the Convention recessed on September 21, 1978. Between that date and the November 7, 1978 general election, the Convention, through its Committee on Submission and Information, implemented its plan for the education of the electorate concerning the proposed amendments.

It mailed to the household of every registered voter in the State a "Con-Con Summary" containing a digest of the proposed amendments. On October 29, 1978, it caused to be published an advertising supplement to the Sunday Star-Bulletin and Advertiser, as well as to the Hawaii Tribune Herald, the Maui News, and the Garden Island. Each of the sections of the revised Constitution which was identified by article and section number in the informational booklet used in the election was printed in full text in this supplement. Other amendments adopted by the Convention and reflected in the revised Constitution which was referred to the Committee on Submission and Information were not printed in the newspaper supplement. This supplement was followed by the publication of the summaries of proposed amendments 1-10 on October 30, 1978, summaries of proposed amendments 11-21 on November 1, 1978, and summaries of proposed amendments 22-34 on November 2, 1978. These summaries were published in the Honolulu Advertiser and the Honolulu Star-Bulletin, both of which are newspapers of general circulation within the State. These summaries were combined and \*330 republished in these newspapers on November 5, 1978, as a two-page advertisement. This combined summary was also distributed to the Sun Press on Oahu, the Maui News, the Hawaii Tribune Herald, and the Garden Island for dissemination to their readers. These summaries contained relevant information on some of the amendments which were not reflected in the informational booklet or in the supplement.

Additionally, the Convention during this period provided for the publication of newspaper advertisements and of radio and television announcements referring interested persons to the Convention information center and its telephone number for answers to questions; for the establishment of a speakers bureau to make convention

delegates available to interested organizations for talks explaining convention amendments; and for radio and television programs in which convention delegates discussed the proposed amendments. The office of the lieutenant governor also conducted a statewide voter education program designed to familiarize the electorate with the ballot and voting procedures. The Convention's final report on advertising expenditures shows that it expended a total of \$140,627.43 to educate the public on the amendments prior to the general election.

## I

[1] [2] The initial issue raised by the pleadings is whether this court has jurisdiction to entertain the proceedings. We hold that we do. HRS Chapter 11, Part XI, vests in this court jurisdiction over the subject matter of this action. Moreover, this court is empowered "to make and award such judgments, decrees, orders and mandates, issue such executions and other processes, and do such other acts and take such other steps as may be necessary to carry into full effect the powers which are or shall be given to it by law or for the promotion of justice in matters pending before it." HRS s 602-5(7).

"The power to ascertain the validity of changes in the constitution resides in the courts, and they have, with practical uniformity, \*\*549 exercised the authority to determine the validity of proposal, submission, or ratification of \*331 change in the organic law. The question of the validity of the adoption of an amendment to the constitution is a judicial and not a political question." 16 Am.Jur.2d, Constitutional Law, s 43.

## II

[3] [4] In considering the merits of the issues raised by the plaintiffs, we are to be guided by the cardinal principle of judicial review that constitutional amendments ratified by the electorate will be upheld unless they can be shown to be invalid beyond a reasonable doubt. *Keenan v. Price*, 68 Idaho 423, 195 P.2d 662 (1948); *City of Raton v. Sproule*, 78 N.M. 138, 429 P.2d 336 (1967). The burden of showing this invalidity is upon the party challenging the results of the election. And "(e)very reasonable presumption is to be indulged in favor of a constitutional amendment which the people have adopted at a general election." *City of Glendale v. Buchanan*, 578 P.2d 221, 224 (Colo.1978). In *Keenan* the court, quoting from *State v. Cooney*, 70 Mont. 355, 225 P. 1007, 1009 (1924), said:

“(H)ere as always we enter upon a consideration of the validity of a constitutional amendment after its adoption by the people with every presumption in its favor: The question is not whether it is possible to condemn the amendment, but whether it is possible to uphold it, and we shall not condemn it unless in our judgment its nullity is manifest beyond a reasonable doubt.” 195 P.2d at 667.

A corollary to the foregoing principle is the oft-stated proposition that “(t)he people are presumed to know what they want, to have understood the proposition submitted to them in all of its implications, and by their approval vote to have determined that (the) amendment is for the public good and expresses the free opinion of a sovereign people.” Larkin v. Gronna, 69 N.D. 234, 285 N.W. 59, 63 (1939).

### III

The basic thrust of the plaintiffs’ arguments in this case is that the constitutional amendments in question were not \*332 submitted to the electorate in the form and manner provided by law. More specifically, the plaintiffs contend in their initial argument that the form of the ballot was so irregular as to require the invalidation of the election. We disagree.

The Convention was authorized by the Constitution to determine the form of the ballot. Article XV, s 2. In its Standing Committee Report No. 99, it explained its reasons for adopting the ballot used in the election:

“Your Committee considered submitting each of the proposed amendments as separate questions with a YES or NO vote. This would result in submitting to the people for ratification not less than 34 questions. Since a major problem to overcome is voter apathy, your Committee was concerned that many voters will not take the time to mark their YES votes but will mark only the question or questions that they are opposed to. For this reason your Committee has agreed that a way should be provided to the voter, if he or she wishes, to approve or reject each of the questions by one vote (Part A) or, if he or she wishes, to vote against one or more of the questions and to

approve the balance (Part B).”

The irregularity charged by the plaintiffs is that the ballot contained an inherent bias towards a “yes” vote by making it more difficult to vote “no” than “yes,” which in effect diluted the vote and denied the electorate their constitutional rights. They suggest that with this ballot, voter inertia would cause voters who were only slightly opposed to an amendment to permit their vote to be recorded in favor rather than to take the trouble to record a negative vote; and this, they argue, introduced into the election a subtle form of bias which was impermissible.<sup>4</sup>

\*333 \*\*550 <sup>[5]</sup> Where the ballot is in a form which produces a knowing and deliberate expression of voter choice, the vote satisfies the requirement of electoral approval. *Kohler v. Tugwell*, 292 F.Supp. 978 (D.La.1968), Affirmed, 393 U.S. 531, 89 S.Ct. 879, 21 L.Ed.2d 755. The voter here was given the choice of voting “yes” or “no” on any or all of the proposed amendments. He was clearly informed that he could vote for or against all amendments under Part A of the ballot, or he could divide his vote under Part B. If he chose to vote “no” on a question under Part B, he did so intending that his vote be divided and knowing how it would be counted. The significance of a negative vote on any proposition upon the remaining unanswered questions was obvious on the face of the ballot. At the beginning of Part B of the ballot, the following clearly appeared: “I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING: . . .”

<sup>[6]</sup> In no sense can it reasonably be said that the voter was likely to be misled by the ballot language. Cf. *Wright v. Board of Trustees of Tatum Ind. Sch. Dist.*, 520 S.W.2d 787 (Tex.Civ.App.1975). The essential requirement is that the ballot not be misleading. *Young v. Byrne*, 144 N.J.Super. 10, 364 A.2d 47 (1976). The fact that Mechanically, as to Part B, it was easier for him to ratify rather than to reject any given proposition did not have the effect of rendering the ballot defective.

<sup>[7]</sup> The contention that a ballot is defective because the form makes it easier for a voter to cast his vote for, rather than against, a particular proposition or candidate has been rejected by many courts. It is apparent from the cases that the historical progression in the development of election procedures by the various states has been from the voice vote to the secret casting of votes by the use only of official ballots, with the secret casting of unofficial ballots as an intermediate step. The term “party ticket” appears to have referred originally to a privately printed ballot containing only the names of the candidates put forward by a particular political party, which the voter



dropped into the ballot box to record his vote. Cases arising around the end of the last century reveal a disposition \*334 on the part of state legislatures, in providing for the use only of official ballots, to continue to facilitate the voting of straight party tickets by enabling the voter to do so by a single mark beside the name of the party. On the other hand, in order for him to divide his vote, he was required to mark the ballot in other ways which involved more time and trouble to the voter. Challenges to such ballots as treating candidates or voters unequally were rejected in *Todd v. Board of Election Commissioners*, 104 Mich. 474, 64 N.W. 496 (1895); *Ritchie v. Richards*, 14 Utah 345, 47 P. 670 (1896); *State ex rel. Runge v. Anderson*, 100 Wis. 523, 76 N.W. 482 (1898); *Morris v. Board of Canvassers*, 49 W.Va. 251, 38 S.E. 500 (1901); *Oughton v. Black*, 212 Pa. 1, 61 A. 346 (1905). More recently, a challenge to the use of a “master lever” on a voting machine to enable a voter to vote a party ticket by a single operation was rejected in *Morrison v. Lamarre*, 75 R.I. 176, 65 A.2d 217 (1949).

Parallel with these cases are those which deal with ballots which, similarly to that now before us, enabled the voter to vote his party’s ticket on proposed constitutional amendments, as well as on candidates, by a single mark beside the name of the party while requiring him otherwise to vote separately on the amendments. Such ballots were upheld in *State v. Winnett*, 78 Neb. 379, 110 N.W. 1113 (1907) and *State ex rel. Sheets v. Laylin*, 69 Ohio St. 1, 68 N.E. 574 (1903).

A form of “scratch ballot” was in early use for obtaining electorate approval of proposed constitutional amendments. Such \*\*551 ballots presented the proposed amendment affirmatively. To cast a vote in favor of the amendment, the voter deposited the ballot unmarked. To vote against the amendment, the voter was required to erase or strike out the words proposing the amendment before depositing the ballot. It was argued that the deposit of an unmarked ballot did not affirmatively express approval of the amendment under state constitutions which required the expression of voter approval. Such challenges were rejected in *May & Thomas Hardware Co. v. Mayor, etc. of Birmingham*, 123 Ala. 306, 26 So. 537 (1899), and *Atwater v. Hassett*, 27 Okl. 292, 111 P. 802 (1910).

<sup>181</sup> This body of authority rests, we believe, upon the principle that the motives of voters may not be inquired into where \*335 their will has been expressed. If avoidance of the effort of casting a negative vote was sufficient reason for any number of voters to cast an affirmative vote, we cannot deny effect to their vote simply because we regard that reason as inadequate, misguided, or otherwise defective.<sup>5</sup> “Where the language

and meaning of a constitutional amendment are clear, a determination of what inducements motivated voters in the adoption of the amendment (is) outside the scope of any judicial examination.” *Carpenter v. State*, 179 Neb. 628, 139 N.W.2d 541, 545 (1966). See also *Detroit United Railway v. Detroit*, 255 U.S. 171, 178, 41 S.Ct. 285, 65 L.Ed. 570 (1921). We are not here concerned with a ballot which presented the proposition in such a manner as to mislead or improperly influence the decision of the voter on its merits, as in the cases cited by the plaintiffs. See, e. g., *Boucher v. Bomhoff*, 495 P.2d 77, 78 (Alaska 1972); *Conley v. Hardwick*, 141 Ky. 136, 132 S.W. 140 (1910); *City of Newport v. Gugel*, 342 S.W.2d 517 (Ky.1961).

In *Boucher* the state constitution provided for the submission to the people, at certain stated intervals, the question, “Shall there be a constitutional convention?” Pursuant to this mandate, the lieutenant governor of the state prepared a ballot which posed the question as follows:

“As required by the Constitution of the State of Alaska . . . Shall there be a constitutional convention?” (Emphasis added)

The court found the prefatory language inherently misleading, in that it implied that a constitutional convention was required to be held by the Alaska Constitution.

\*336 In *Conley* the Kentucky court invalidated a referendum election in which the issue was to permit or not permit the sale of intoxicants. The “Dry” column on the ballot was headed by a representation of the Bible and the “Wet” column by a drawing of a whiskey bottle with a snake protruding from its mouth. The court said:

“The ballot is a means devised by law to secure a fair expression of the will of the people, and it should never contain devices that give to one side an undue advantage over the other. It was highly improper to use any devices at all, and absolutely inexcusable to use the devices referred to, or either of them.” 132 S.W. at 141.

In *City of Newport* the election challenge concerned a ballot wherein the proposition to be voted was titled “Fair Pay Petition.” The court found this to be in violation of the statutory mode for submitting such proposals and further said:

“While the words ‘Fair Pay Petition’ are mild and not calculated to arouse violent prejudices, nevertheless it is plain that \*\*552 they were put on the ballots and voting machine labels for propaganda purposes and with the

thought that they would in fact influence some of the voters . . .

" . . . It is our opinion that the use of the words 'Fair Pay Petition' on the ballots and voting machine labels was such an impropriety as to invalidate the election." 342 S.W.2d at 519.

In each of these cases, the proposition was placed on the ballot in a form which implied a recommendation as to the vote. This was held to be an improper attempt to influence the election result and to invalidate the election. We do not find this to be the situation here.

#### IV

Intimately related to the ballot bias issue is the question of duplicity. The plaintiffs argue, for example, that Question No. 1 on the ballot (12 Member Jury; Civil Case Amount) \*337 ought to have been presented as two separate propositions instead of one, inasmuch as the question as presented contained two different subject matters: (1) a proposal to raise the minimum amount for jury trials in civil cases, and (2) a proposal to guarantee an accused, charged with a serious criminal offense, a jury of twelve persons. They contend that in this and in other similar respects, the ballot violated the prohibition against the incorporation of different subjects into a single ballot proposition. We disagree.

[9] Unless otherwise provided in the Constitution,<sup>6</sup> there is no limitation on the number of subjects that may be included in a proposed constitutional amendment. *State v. Brown*, 10 Ohio St.2d 139, 226 N.E.2d 116 (1967); *Opinion of the Justices*, 335 So.2d 373 (Ala.1976); *People v. Sours*, 31 Colo. 369, 74 P. 167 (1903). See also *City and County of Denver v. Mewborn*, 143 Colo. 407, 354 P.2d 155 (1960). There is nothing in the Hawaii Constitution that will support a reasonable conclusion that a single amendment to the constitution proposed by a constitutional convention can contain no more than one subject, purpose or object. And while Article III, s 15, of the Hawaii Constitution, expressly prohibits the enactment of legislation embracing more than one subject, such a proscription is not \*338 applicable to constitutional amendments. *State v. Brown*, supra; *State v. Lyons*, 1 Terry 77, 40 Del. 77, 5 A.2d 495 (1939); *Cooney v. Foote*, 142 Ga. 647, 83 S.E. 537 (1914); *Bonds v. State Department of Revenue*, 254 Ala. 553, 49 So.2d 280 (1950). Article XV, s 2, expressly authorizes the Convention to determine, in its discretion, the manner in which proposed amendments shall be submitted to a vote

of the electorate. This particular provision has been in effect, unamended, since the adoption by the people of the original Constitution.

[10] [11] [12] This broad authority vested in the Convention, however, is subject to the limitation that the ballot must enable the voters to express their choice on the amendments \*\*553 presented and be in such form and language as not to deceive or mislead the public.<sup>7</sup> *State v. Brown*, supra; *Kohler v. Tugwell*, supra; *Wright v. Board of Trustees of Tatum Ind. Sch. Dist.*, supra; *Boucher v. Bomhoff*, supra; *Conley v. Hardwick*, supra; *City of Newport v. Gugel*, supra. By this standard, we are satisfied that with respect to the amendments which were properly submitted for voter approval, as determined in Part V of this opinion, the form and language of the ballot, which included the informational booklet, was in compliance with existing law. The form of the ballot in this case lay within the range of the possible choices which the Convention might have made in the exercise of authority granted to it by Article XV, s 2, of the Constitution. The fact that the electorate was presented with an array of complex amendments, to which they were asked to address themselves, does not create a presumption that the form of the ballot was misleading or defective and does not open the door to judicial inquiry into the state of mind of the voters. See *Kohler v. Tugwell*, supra; *Carpenter v. State*, supra.

#### \*339 V

The plaintiffs further assert, however, that the electorate was deprived of necessary information concerning the proposed amendments. This, as it now appears, is the determinative issue in this case. Stated more broadly, the question is whether the results of the election can be said to have been the mandate of an informed electorate.

Article XV, s 3, of the present Constitution, requires that legislatively initiated proposals be published "once in each of four successive weeks in at least one newspaper of general circulation in each senatorial district wherein such newspaper is published, within the two months' period immediately preceding the next general election."<sup>8</sup> There is no such requirement imposed for convention initiated amendments. The Convention, however, was required to inform the public of the contents and effect of the proposed amendments. Cf. *Kohler v. Tugwell*, supra; *City of Glendale v. Buchanan*, supra.

[13] [14] The burden upon the Convention of informing the electorate was especially heavy, but required, by reason of

the number and complexity of the amendments proposed by it. Correlatively, however, it was incumbent upon members of the public to educate and familiarize themselves with the contents and effect of the proposed amendments before expressing themselves at the polls. *Kohler v. Tugwell*, supra; *Young v. Byrne*, 144 N.J.Super. 10, 364 A.2d 47 (1976). This was a non-delegable responsibility which was magnified, rather than diminished, by the number of complex amendments presented to them for their consideration. Thus, where information placed before the electorate is neither deceptive nor misleading, and they are given sufficient time within which to familiarize themselves with the contents and effect of the proposed amendments, they will be deemed to have \*340 cast informed ballots. See *Kohler v. Tugwell*, supra; *McLennan v. Aldredge*, 223 Ga. 879, 159 S.E.2d 682 (1968); *City of Glendale v. Buchanan*, supra; *Barnhart v. Herseith*, supra.

The amendments in this case were given extensive coverage before the election. They were the subject of widespread publicity in the newspapers, and on radio and television. Summaries of the amendments \*\*554 were published in the newspapers, as well as in a "Con-Con Summary" which was mailed by the Convention to the residence of every registered voter in the State.<sup>9</sup> An advertising supplement which purported to contain the full text of the amendments was distributed through the newspapers in every county. The daily proceedings of the Convention were covered and regularly reported upon by the news media. Informational sessions regarding the ballot and voting procedures were conducted by the office of lieutenant governor for the benefit of the public. By these means and sources, the voter could have reasonably educated and familiarized himself with the significance and substance of the bulk of the proposed amendments before going to the polls. Further the newspaper supplement was available at the polls for the voter's examination. The informational booklet which was made a part of the ballot also contained a digest of the amendments.

There were flaws in this procedure, however, which we have found fatal to certain of these amendments. We refer specifically to amendatory deletions and additions of a substantive nature which were not mentioned in both the informational booklet and the newspaper supplement. The vital significance of these omissions stems from the express representation of the Convention in its advertisements that the full text of the amendments would be made available to the public for its examination. To accomplish this objective, it caused to be published the newspaper supplement which, in bold type, informed the reader: "THE COMPLETE TEXT OF THE \*341

CONSTITUTIONAL AMENDMENTS IS CONTAINED IN THIS SUPPLEMENT." It did not in fact contain the full text of all of the proposed amendments. The public, however, was entitled to rely upon these Convention-inspired representations. It had the right to expect that the supplement which received statewide dissemination would contain, at the very least, the material substances of all of the proposed amendments. Thus, to the extent that the ballot (which included the informational booklet) and the supplement failed to reveal the substantive nature and effect of a proposed amendment, the voter will be deemed to have been uninformed with respect to that particular amendment. Cf. *Kohler v. Tugwell*, supra.

<sup>115</sup> The omissions to which we address ourselves are those which have been called to our attention by the agreed statement of facts of the parties. In reviewing these omissions, we are confined to a consideration of whether the election resulted in a valid expression of the will of the electorate. The meaning and effect to be given to that expression are not among the issues presented to us. This limitation excludes from our consideration any interpretation of the constitutional amendments which we find to have been submitted to and approved by the electorate. We have determined that some of these omissions are fatal to certain of the proposed amendments. What significance such omissions may have in determining the meaning and effect of the amendments which were submitted and approved is outside the issues in this case, and upon such questions we express no opinion.<sup>10</sup>

A major omission of a substantive nature concerns the deletion, from the present Constitution, of Article X, s 5, which provides:

**\*342 "FARM AND HOME OWNERSHIP**

"Section 5. The public lands shall be used for the development of farm And home ownership on as widespread a basis \*\*555 as possible, in accordance with procedures and limitations prescribed by law." (Emphasis added)

This deletion, particularly with respect to the phrase "and home ownership," represents a fundamental change in constitutional philosophy regarding the use of public lands. To a home-starved populace which may fairly characterize the people of Hawaii, this change in emphasis is a substantive matter to which they were entitled to address themselves at the polls. They were not given the opportunity to do so. Accordingly, we hold that the amendment adopted by the Convention deleting

present Article X, s 5, in its entirety was not validly ratified.

Another major omission of a substantive nature concerns New Article XII, s 7, which provides:

"The term 'Hawaiian' means any descendant of the races inhabiting the Hawaiian Islands, previous to 1778.

The term 'native Hawaiian' means any descendant of not less than one-half part of the blood of races inhabiting the Hawaiian Islands previous to 1778 as defined by the Hawaiian Homes Commission Act, 1920, as amended or may be amended."

This proposed amendment to present Article XI (New Article XII) was not properly presented to the public for its consideration under Question No. 28 (Office of Hawaiian Affairs) and was, therefore, not validly ratified. Several other relatively minor amendments of a substantive nature have also failed of ratification for the same reason. These concern the proposed amendments to Article III, s 2 and s 3;<sup>11</sup> the addition to New Article IV, s 5, of a new **\*343** paragraph numbered 9;<sup>12</sup> the purposed amendment to Article XVI, s 1 (New Article XVIII, s 1);<sup>13</sup> and the deletion of that portion of Article III, s 4, entitled "Minimum Representation for Basic Island Units."<sup>14</sup>

<sup>[16]</sup> On the other hand, we find the proposed amendment to Article III, s 10 (presently Article III, s 11), which was presented to the public under Question No. 7 (Legislative Terms, Functions and Procedures; etc.), to have been validly ratified. While the full text of the amendment was not contained in the supplement, the summaries of the proposal in both the informational booklet and the supplement fairly **\*\*556** and sufficiently advised the voter of the substance and effect of the proposed amendment. See *Kohler v. Tugwell*, supra. New **\*344** Article III, s 10, as thus amended, reads as follows:

"Each regular session shall be recessed for not less than five days at some period between the twentieth and fortieth days of the regular session. The legislature shall determine the dates of the mandatory recess by concurrent resolution. Any session may be recessed by concurrent resolution adopted by a majority of the members to which each house is entitled. Saturdays, Sundays, holidays, the days in mandatory recess and any days in recess pursuant to a concurrent resolution shall be excluded in computing the number of days of any

session."

<sup>[17]</sup> We also find the purely stylistic and technical changes embodied in Question No. 34 (Technical & Style Changes), to have been validly ratified.<sup>15</sup> These changes consist of the substitution of words of similar meaning for those appearing in the existing Constitution. For example, "as provided by law" appears instead of "in accordance with law," "prescribed" instead of "provided," "shall serve as chairperson" instead of "shall chair," "provided for" instead of "made," and the like. In addition, words such as "the person's" are substituted for "his," "oneself" for "himself," "the accused" for "him," and the like. Numerous changes are made in punctuation and grammar. To require the publication of these non-substantive amendments in full would have been superfluous and would have required the publication of the entire Constitution. It would appear from a reading of the Convention's standing committee report that only the "PREAMBLE" and "FEDERAL CONSTITUTION ADOPTED" portions of the present Constitution were left untouched by the committee's stylistic surgery.<sup>16</sup>

**\*345** <sup>[18]</sup> <sup>[19]</sup> There appears to be, however, other amendments of a substantive nature which are not readily apparent from the committee report. In Question No. 34, the electorate was asked to approve certain unspecified "changes (in) the Constitution where the subject may now be unconstitutional or unnecessary under the Constitution of the United States." This was too broad and vague a request, especially since it involved changes in the fundamental law. However valid the Convention's reasons might have been, it was for the people, based upon adequate information, to determine whether and to what extent the organic law of the State ought to undergo revision.

The question of whether any amendment submitted for approval by Question No. 34 was in fact approved thus depends on its effect upon substantive law. If the amendment is purely stylistic and technical in nature, and does not alter the sense, meaning or effect of any provision of the Constitution, it was approved by the electorate and has become a part of the revised Constitution. On the other hand, if the amendment alters the sense, meaning or effect of any provision of the Constitution, it was not **\*\*557** ratified and is not effective to change the language of the Constitution. Obviously, we are not now in a position to make these line by line determinations. Neither are we presently concerned with the meaning and effect of any of the amendments proposed by the Convention.

Finally, as to all of the other amendments presented to the people by the 1978 Constitutional Convention for their approval, we find that constitutional publication and balloting requirements have been satisfied. Accordingly, we hold that these proposed amendments have been ratified.

KIDWELL, Justice, concurring and dissenting.

I join without reservation in most of what is said in the court's opinion, but am unable to agree that either the amendatory language appearing in Article III, Section 10 of the constitution as revised by the Convention, or the amendments purportedly presented under Question No. 34, were approved at the general election as required by Article XV, Section 2 of the constitution.

The procedure for amending the constitution provided by Article XV, Section 2 gives no effect to the proposal of amendments by a convention unless they are submitted to the electorate for approval. I do not dispute the proposition that submission of proposed amendments may be accomplished without placing the text of the amended constitution physically before each voter in the polling place. The opinion analyzes the steps taken to inform the voters prior to the election with respect to the effect of the proposed amendments, on the premise that those steps constituted a part of the process of submission of the amendments, rather than only a process designed to acquaint the voters with what was submitted. This is, in my opinion, an incorrect view of what was taking place.

The definitive action of the Convention, by which it settled upon the proposed amendments and determined the manner of their submission, was the adoption of Resolution No. 30. By this resolution the Convention resolved:

That the proposed amendments to the Constitution be submitted to the people of the State of Hawaii in the form \*347 of the ballot attached hereto for ratification or rejection at the general election to be held on the 7th day of November, 1978. . . . Such submission shall be by ballot and shall be conducted and the results thereof determined in conformity with Section 2, Article XV of the Constitution. The ballot for such submission . . . shall be substantially in the form hereto attached . . . . (Emphasis added)

The form of ballot attached to Resolution No. 30 contains this significant communication to each voter:

Please read instructions and information in the booklet which is part of this ballot. The full text of the proposed amendments on the ballot numbered 1-34, inclusive, is available for inspection in your voting unit.

Resolution No. 30 was presented to the Convention by a report of its Committee on Submission and Information, which report was adopted by the Convention. The report recited that the amendments were too complex and lengthy to be listed on the ballot, and stated:

The numbers and the proposed amendments will be keyed to an explanatory booklet which will accompany the ballot card and also to a complete text of Constitutional changes displayed in each voting unit.

The report also stated that "full texts of the Constitution will be placed at the voter unit, thereby enabling voters who are not completely prepared an adequate opportunity to examine and review the proposed amendments and the revised Constitution as a whole."

The committee report proposed a public information program of the nature of that which was in fact conducted and which is described in the court's opinion. Authorization to conduct this informational program was given to the committee by adoption of the committee report. However, nothing in the committee report suggests authorization \*\*558 to change the manner of submission of the amendments to the voters which is provided in Resolution No. 30.

For reasons which are not significant to our present inquiry, the procedure prescribed in Resolution No. 30 for \*348 submission of the proposed amendments to the electorate was not followed precisely. The full text of all of the proposed amendments was not made available in the polling places. Instead, copies of the newspaper supplement which had been published on October 29, 1978 were distributed to and were available for examination in each of the polling places. Notwithstanding the representation made in the supplement that it contained the full text of the proposed amendments, the text of the amendments which are now in question was omitted and was not available for voter

inspection. I am unable to dismiss this as an immaterial departure from the manner of submission which was determined upon by the Convention. Had the text of none of the amendments been made available to the voters at the polling places, the departure from the prescribed manner of submission would have been striking and difficult to disregard. Yet as to each of the amendments the text of which was omitted from the material delivered to the polling places the departure is equally striking. I am forced to the conclusion that, as to those amendments, a submission to the voters in a manner determined by the Convention did not take place and those amendments did not receive voter approval.

The mechanical test which I would apply to determine which amendments became a part of the constitution may appear to elevate form over substance. The effort of the majority to find a different solution, however, places us in an uneasy position of uncertainty as to the precise wording of our fundamental law. The court's opinion makes the effect of the affirmative vote on Question No. 34 a question for inquiry whenever the meaning of the constitution is sought. I would avoid that result, and place our determination on what I consider to be a sounder rationale, by holding that voter approval extended only to the amendments contained in full text in the newspaper supplement.

\*\*559 APPENDIX A

STATE OF HAWAII

TOP

**OFFICIAL BALLOT**

**GENERAL ELECTION**

TUESDAY, NOVEMBER 7, 1978

AMENDMENTS TO THE STATE CONSTITUTION PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION

146881

(OVER)

This ballot shall be returned by the voter to the Registrar.

Please read instructions and amendments to the State of Hawaii Constitution on the back of this ballot. The list on the right of the proposed amendments on this ballot is numbered 1-34. Refer to the list on the back of this ballot for the full text of each amendment.

VOTE ONLY IN PART A OR PART B DO NOT VOTE IN MORE THAN ONE PART	
PART A	YES -
ON ALL PROPOSED AMENDMENTS AS LISTED UNDER PART A, I VOTE:	NO -
OR	
PART B	YES -
I VOTE YES ON EACH OF THE PROPOSED AMENDMENTS AS LISTED BELOW EXCEPT THAT I VOTE NO ON THE FOLLOWING:	NO -
1. 12 MEMBER JURY: CIVIL CASE AMOUNT	NO -
2. INDEPENDENT GRAND JURY COMMISSION	NO -
3. RIGHT TO PRIVACY	NO -
4. OPEN PRIMARY ELECTION	NO -
5. REGISTRATION OF CANDIDATES FOR PUBLIC OFFICE	NO -
6. ELECTIONS: PARTIAL PUBLIC FINANCING; SPENDING & CONTRIBUTION LIMITS	NO -
7. LEGISLATIVE TERMS: FUNCTIONS & POWERS; SALARY COMMISSION	NO -
8. REAPPORTMENT: PROCEDURE	NO -
9. EXECUTIVE DEPARTMENTS: TERM LIMITS	NO -
10. COURTS: JUDICIAL SELECTION; DISCIPLINE	NO -
11. STATE SPENDING LIMIT; TAX RETURN	NO -
12. BENT LIMITATION: EXCLUSION	NO -
13. SPECIAL PURPOSE REVENUE BONDS	NO -

291 CONTINUED ON OTHER SIDE (OVER)

STATE OF HAWAII

TOP

**OFFICIAL BALLOT**

**GENERAL ELECTION**

TUESDAY, NOVEMBER 7, 1978

AMENDMENTS TO THE STATE CONSTITUTION PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION

CONTINUED FROM OTHER SIDE

This ballot shall be returned by the voter to the Registrar.

Please read instructions and amendments to the State of Hawaii Constitution on the back of this ballot. The list on the right of the proposed amendments on this ballot is numbered 1-34. Refer to the list on the back of this ballot for the full text of each amendment.

14. REFERENDUM: VEDGETE POSTAL	NO -
15. TAX EXEMPTION & TAX COMMISSION	NO -
16. PROPERTY POWER TO TAX REAL PROPERTY	NO -
17. PUBLIC HEALTH & WELFARE	NO -
18. POPULATION GROWTH MANAGEMENT	NO -
19. BOARD OF EDUCATION	NO -
20. EDUCATION: HAWAIIAN STUDIES	NO -
21. DEPARTMENT BOARD OF RECORDS	NO -
22. WATER RESOURCES: PROTECTION & CONTROL	NO -
23. ENVIRONMENT & RESOURCE PROTECTION	NO -
24. LAND MANAGEMENT: AGRICULTURAL LAND	NO -
25. CONTROL OF MARINE RESOURCES	NO -
26. RESTRICTIONS ON NUCLEAR ENERGY	NO -
27. DEPARTMENT OF HAWAIIAN HOME LANDS	NO -
28. OFFICE OF HAWAIIAN AFFAIRS	NO -
29. TERRITORIAL & CUSTODIARY RIGHTS	NO -
30. CODE OF JUDICIAL ETHICS	NO -
31. APPELLATE: STATE COURTS & JUDICIAL POSITION	NO -
32. ISSUES ON ADVISORY POSITION	NO -
33. MULTILINGUAL REVISIONS	NO -
34. TECHNICAL & STYLE CHANGES	NO -

292 (OVER)

\*\*560 APPENDIX B

**AMENDMENTS TO THE STATE CONSTITUTION  
PROPOSED BY THE 1978 CONSTITUTIONAL CONVENTION**

November 7, 1978—State of Hawaii



**PLEASE READ THIS INFORMATIONAL BOOKLET  
IT IS PART OF YOUR OFFICIAL BALLOT**

All amendments proposed by the 1978 Constitutional Convention have been incorporated into proposals 1-34 in Part B of the ballot. A brief description of each of the proposed amendments is contained in this booklet. The Constitutional amendments are available for your inspection in your voting unit.

\*\*5610



<ul style="list-style-type: none"> <li>provides for the promotion of Hawaiian history, culture, and language and a Hawaiian education program.</li> </ul>	<ul style="list-style-type: none"> <li>permits the State to acquire interests in real property in order to control development and land use; directs exercise of such power to be for a public use and purpose.</li> </ul>	<p><b>32. CODE OF ETHICS (Article XIV)</b></p> <p>If adopted, this amendment:</p> <ul style="list-style-type: none"> <li>enacts ethics codes for constitutional convention delegates and employees.</li> <li>provides that ethics codes must require provisions for financial disclosure.</li> <li>requires an independent commission to supervise ethics codes.</li> <li>requires lobbyist regulations.</li> <li>requires candidates for political office to file financial disclosures.</li> </ul>
<p><b>21. UNIVERSITY BOARD OF REGENTS (Article X, Section 6)</b></p> <p>If adopted, this amendment:</p> <ul style="list-style-type: none"> <li>clarifies the board of regents' exclusive jurisdiction, subject to statewide laws, over the internal organization and management of the University of Hawaii.</li> </ul>	<p><b>25. CONTROL OF MARINE RESOURCES (Article XI, Section 6)</b></p> <p>If adopted, this amendment:</p> <ul style="list-style-type: none"> <li>gives the State the power to manage and control the ocean waters and lands which are located within the boundaries of the State.</li> <li>reserves to the State the right to manage and control ocean waters and lands which are located outside the boundaries of the State as long as federal or international law does not prevent the State from doing so.</li> <li>adds to the list of areas not open to the public, those areas where a state licensed recreational activity is operating but requires the legislature to establish guidelines for maritime activities to protect the public's use and enjoyment of the reef.</li> </ul>	<p><b>31. PREAMBLE, STATE BOUNDARIES AND MOITY (Preamble, Article XV, Sections 1, 4 and 5)</b></p> <p>If adopted, this amendment:</p> <ul style="list-style-type: none"> <li>revises the Preamble.</li> <li>affirms that the State's boundaries include the waters around all the State's islands.</li> <li>gives a State motto and official languages of English and Hawaiian.</li> </ul>
<p><b>22. WATER RESOURCES PROTECTION AND CONTROL (Article XI, Section 7)</b></p> <p>If adopted, this amendment:</p> <ul style="list-style-type: none"> <li>obliges the State to protect, control, and regulate the uses of Hawaii's water resources for the benefit of the people of Hawaii.</li> <li>requests the legislature to ensure that there is a water resources agency to help protect, control, and regulate the water.</li> </ul>		
<p><b>23. ENVIRONMENT AND RESOURCE PROTECTION (Article XI, Sections 1 and 8)</b></p> <p>If adopted, this amendment:</p>	<p><b>26. RESTRICTIONS ON NUCLEAR ENTRY (Article XI, Section 8)</b></p> <p>If adopted, this amendment:</p>	<p><b>33. LIMITS ON ADVERSE POSSESSION (Article XII, Section 10)</b></p> <p>If adopted, this amendment:</p>
<ul style="list-style-type: none"> <li>requires the State and counties to conserve and protect the natural beauty and natural resources of Hawaii.</li> <li>requires the State to promote the development and use of other resources in a manner consistent with conserving these resources and promoting the self-sufficiency of the State.</li> <li>requires the State to help all people realize the benefits of the State's natural resources.</li> <li>gives each person the right to a clean and healthful environment as defined by law.</li> <li>gives each person the right to sue to enforce this right and the legislature may limit and regulate this right in a reasonable manner.</li> </ul>	<ul style="list-style-type: none"> <li>requires anyone wishing to construct a nuclear reactor or power plant or dispose of radioactive material to receive the approval of two thirds of the members of each house of the legislature.</li> </ul>	<ul style="list-style-type: none"> <li>limits the acquiring of title to real property by adverse possession except that five years or less may be claimed by adverse possession but not more than one in 20 years.</li> </ul>
<p><b>24. LAND MANAGEMENT, AGRICULTURAL LAND (Article XI, Sections 3 and 4)</b></p> <p>If adopted, this amendment:</p>	<p><b>27. DEPARTMENT OF HAWAIIAN HOME LANDS (Article XI, Section 11, this case; Hawaii Constitution, Art. 11, § 11, as amended; Sections 204, 212, 213 and 221)</b></p> <p>If adopted, this amendment:</p>	<p><b>34. MISCELLANEOUS REVISIONS (Article XVI, Sections 2 and 3; Article XVII, Section 2)</b></p> <p>If adopted, this amendment:</p>
<ul style="list-style-type: none"> <li>requires the State to conserve and protect agricultural lands, promote diversified agriculture, increase agricultural self-sufficiency, and ensure that agriculturally suitable lands will be available.</li> <li>requires the State to identify which agricultural lands are needed to promote the future of agriculture.</li> <li>requires that lands identified as important for agriculture shall not be used for any other purpose unless certain standards and criteria set by the legislature are met and approved by a two-thirds vote of the governmental body which in 12 approve changes in the use of the land.</li> </ul>	<ul style="list-style-type: none"> <li>requires the legislature to fund the Department of Hawaiian Home Lands.</li> <li>guarantees that traditional housing continues.</li> <li>allows Department more flexibility.</li> </ul>	<ul style="list-style-type: none"> <li>would keep persons convicted of a past felony, of substance abuse, from holding public office.</li> <li>says that government's ending must be in plain language.</li> <li>clarifies the time when voters must be asked if they want to have another constitutional convention.</li> <li>lets the next constitutional convention start a month earlier giving three 5 months before the general election instead of 4.</li> </ul>
<p><b>25. OFFICE OF HAWAIIAN AFFAIRS (Article XII, Sections 4, 5 and 6)</b></p> <p>If adopted, this amendment:</p>	<p><b>28. TRADITIONAL AND CUSTOMARY RIGHTS (Article XI, Section 8)</b></p> <p>If adopted, this amendment:</p>	<p><b>35. TECHNICAL AND STYLE CHANGES</b></p> <p>If adopted, this amendment:</p>
<ul style="list-style-type: none"> <li>sets forth the trust corpus and beneficiaries of the Admission Act.</li> <li>establishes an Office of Hawaiian Affairs with an eleven board of trustees and provides for an effective date.</li> </ul>	<ul style="list-style-type: none"> <li>allows descendants of native Hawaiians, subject to other regulation, to exercise rights that have been customarily and traditionally exercised.</li> </ul>	<ul style="list-style-type: none"> <li>changes the Constitution of the United States so that the subject may now be unconstitutional or unconstitutional under the Constitution of the United States.</li> <li>changes style and language.</li> <li>replaces words which sound like they apply to only one or more by words which apply to everyone.</li> <li>makes small changes which are related to the main purposes of the other amendments.</li> </ul>

## All Citations

60 Haw. 324, 590 P.2d 543

## Footnotes

- The 1978 Constitutional Convention was mandated by the voters in 1976, when the question, "Shall there be a convention to propose a revision of or amendments to the Constitution?" was placed on the general election ballot. Hawaii's first constitutional convention was held in 1950 when 63 delegates met to draft a document, which became official and operational when Hawaii became a state in 1959. Another convention was held in 1968 when 82 delegates met and proposed 23 amendments to the voters. The 1978 convention was attended by 102 delegates and the number of amendments offered to the electorate totalled 34.
- Article XV, s 2, in pertinent part, provides that "(t)he revision or amendments shall be effective only if approved at a general election by a majority of all the votes tallied upon the question, this majority constituting at least thirty-five percent of the total vote cast at the election." Most were approved by the electorate by substantial popular vote margins.
- See Appendices "A" and "B" attached to this opinion. They follow essentially the same format as those used in the 1968 election.
- Almost any ballot can be said to have some bias. But this fact alone will not suffice to invalidate an election. The arrangement of names in alphabetical order on an election ballot, for example, must somewhat favor some candidates over others. Such a listing is not impermissible. See HRS s 11-115. The order in which amendments were listed on the ballot in this case could arguably have had a bias effect. But to require that a ballot must be wholly unbiased would result in the imposition of an impractical standard of perfection.
- The amicus brief of the Hawaii State Bar Association contends that the ballot failed to comply with Rule 2.3 E5 of the Rules and Regulations Governing Elections adopted by the Lieutenant Governor pursuant to HRS s 11-4. Authority to determine the form of the ballot by which the proposed amendments were submitted to the electorate for approval was conferred on the Convention by Article XV, Section 2, of the Hawaii Constitution and is not subject to the control of the legislature. Since we hold that the form



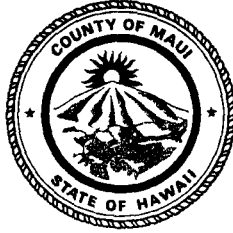
of the ballot was not defective, we are not faced with the question of the effect to be given to a vote recorded by a defective ballot. Evidence offered by the plaintiffs with respect to the effect on voter motivation of the form of the ballot is accordingly irrelevant.

- 6 The cases cited by the plaintiffs on the issue of duplicity were decided on the basis of express constitutional provisions proscribing the inclusion of multiple subjects in a single ballot proposition. In *Kerby v. Luhrs*, 44 Ariz. 208, 36 P.2d 549 (1934), for example, the Arizona constitution expressly provided that "(i)f more than one proposed amendment shall be submitted at any election, such proposed amendments shall be submitted in such manner that the electors may vote for or against such proposed amendments separately." The modern test for duplicity is whether or not the propositions contained in the amendment are all germane to a common object and purpose. *Idaho Water Resource Board v. Kramer*, 97 Idaho 535, 548 P.2d 35, 52 (1976); *Keenan v. Price*, *supra*. An example of the application of this rule is to be found in *Barnhart v. Herseth*, 88 S.D. 503, 222 N.W.2d 131 (1974). There it was held that a constitutional amendment which made several changes in the executive branch of state government including, *inter alia*, extending the term of the governor, reducing the number of governmental departments, authorizing the governor to reorganize departments of government, and deleting the office of state superintendent of public instruction, contained matters all rationally related to the overall plan of making the executive branch of state government more efficient and responsible, and thus was properly submitted to the voters as one amendment.
- 7 The ballot need not contain the full text of a proposed amendment. *Tipton v. Smith*, 229 S.C. 471, 93 S.E.2d 640 (1956). But in such case the ballot should contain "a description of the proposition submitted in such language as to constitute a fair portrayal of the chief features of the proposition, in words of plain meaning, so that it can be understood by persons entitled to vote. . . . (I)t is sufficient if enough is printed on the ballot to identify the matter and show its character and purpose." *Wright v. Board of Trustees of Tatum Ind. Sch. Dist.*, *supra*, at 792.
- 8 It has been held that in such circumstances, a conclusive presumption that the electorate was aware of the terms of the amendment was thereby created. *Opinion of the Justices*, *supra*.
- 9 We think the "Con-Con Summary" was an excellent method of informing the voter of the proposed amendments. The Convention, however, could have devoted more space than it did to a comparative analysis of the substantive effect of the proposed amendments.
- 10 We do not, for example, inquire into whether as a result of their adoption, other substantive changes in the Constitution have been effected by necessary implication. See *People v. Sours*, *supra*; *McLennan v. Aldredge*, *supra*; *Keenan v. Price*, *supra*. Neither are we here concerned with the effects of partial invalidation. See *Carpenter v. State*, *supra*.
- 11 The proposed amendments to Article III, s 2 and s 3 are as follows (new material underlined and deleted material in brackets):  
"Section 2. The senate shall be composed of twenty-five members, who shall be elected by the qualified voters of the respective senatorial districts. (Until the next reapportionment the) The senatorial districts and the number of senators to be elected from each shall be as set forth in the (Schedule.) Reapportionment plan as established by the reapportionment commission."  
"Section 3. The house of representatives shall be composed of fifty-one members, who shall be elected by the qualified voters of the respective representative districts. (Until the next reapportionment, the) The representative districts and the number of representatives to be elected from each shall be as set forth in the (Schedule.) Reapportionment plan as established by the reapportionment commission."
- 12 Proposed New Article IV, s 5, par. 9, provides:  
"No consideration shall be given to holdover senators in effecting redistricting."
- 13 Proposed New Article XVIII, s 1, provides:  
"Until the next reapportionment the senatorial districts and the number of senators to be elected from each shall be as set forth in the 1973 reapportionment plan. Until the next reapportionment the representative districts and the number of representatives to be elected from each shall be as set forth in the 1973 reapportionment plan."
- 14 The following is the proposed deletion from Article III, s 4:  
"MINIMUM REPRESENTATION FOR BASIC ISLAND UNITS  
The representation of any basic island unit initially allocated less than a minimum of two senators and three representatives shall be augmented by allocating thereto the number of senators or representatives necessary to attain such minimums which number, notwithstanding the provisions of Sections 2 and 3 of this article shall be added to the membership of the appropriate body until the next reapportionment. The senators or representatives of any basic island unit so augmented shall exercise a

fractional vote wherein the numerator is the number initially allocated and the denominator is the minimum above specified.”

- 15 The obvious purpose of the amendment is comparable, on a constitutional level, to the duty of the state’s revisor of statutes under HRS ss 2-6 and 2-10 to ensure, where possible, consistency throughout the statutory scheme in manner and style. However, the revisor may not, in making such revisions, alter the sense, meaning or effect of any act. *Id.*
- 16 In moving for the adoption of Standing Committee Report No. 104, Delegate Hamilton informed the Convention:  
“ . . . Finally, we really were engaged the Committee on Style with two functions. The first was the fairly traditional one which had been true in previous conventions, and this involved style, phraseology, consistency, capitalization, punctuation and so on. We also, of course, were responsible for and had arranged the various articles in what seemed proper and logical order. The Committee on Style this time had two new functions given to it by the Convention. One was to rid the Constitution of discriminatory pronouns, adjectives and any other terms, and that has been done.  
“The second thing was to restyle the entire Constitution, which had not been done since 1950. That, too, has been done. Thus the entire document is consistent in terms of punctuation, capitalization and so forth. Mr. President, I would recommend its adoption.”

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Mayor



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WAILUKU, MAUI, HAWAII 96793  
EMAIL: CORPCOUN@MAUICOUNTY.GOV  
TELEPHONE: (808) 270-7740  
FACSIMILE: (808) 270-7152

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MEMO TO: Mike White  
Council Chair

FROM: Jeffrey Ueoka *JU*  
Deputy Corporation Counsel

DATE: October 12, 2017

SUBJECT: **OPINION REGARDING EFFECTIVE DATE OF AMENDMENT  
TO MAUI COUNTY CHARTER SECTION 6-2 RELATING TO  
REVIEW OF APPOINTMENTS OF COUNTY DIRECTORS BY  
THE COUNCIL** (PAF 17-235))

We are in receipt of your request dated October 7, 2017 regarding the effective date of amendment to Revised Charter of the County of Maui (1983), as amended ("Charter"), Section 6-2 relating to review of appointments of county directors by the Council. Due to time constraints we are unable to exhaustively research this matter and offer the following brief explanation.



While we recognize that Resolution 16-96 clearly states that the Charter amendments are to be effective on January 2, 2019, it is our understanding that the ballot question and informational materials provided to the public did not make clear that the amendment would not take effect until January 2, 2019, therefore that as of the date of this memo, we feel that the Council has the authority to confirm or deny the Mayor's nominee for Finance Director. We make this recommendation while keeping in mind the concepts of transparency in government and giving the public the opportunity to have some input in the confirmation of the Finance Director. In regards to your question as to why our office approved the ballot question as to form and legality without the effective date, we can state that the ballot question was in proper form and legal, however this specific situation was unfortunately overlooked by all parties involved with the drafting and review of the ballot question.

Mike White  
Council Chair  
October 12, 2017  
Page 2

If the Council determines to exercise, what we believe to be its authority to confirm or deny the Mayor's nominee for Finance Director, the Council's review shall be constrained by the Charter, the Maui County Code, and all other applicable laws. At the time of this memo the Council has not yet adopted any specific qualifications for administrative heads, accordingly if none are adopted by the time that the nominee for Finance Director is being considered, we recommend following existing laws.

Please let us know if you have any additional questions.

APPROVED FOR TRANSMITTAL:



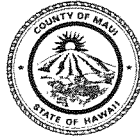
PATRICK K. WONG  
Corporation Counsel  
2017-1262  
2017-10-12 Memo to Chair

Council Chair  
Mike White

Vice-Chair  
Robert Carroll

Presiding Officer Pro Tempore  
Stacy Crivello

Councilmembers  
Alika Atay  
Elle Cochran  
Don S. Guzman  
Riki Hokama  
Kelly T. King  
Yuki Lei K. Sugimura



**COUNTY COUNCIL**  
COUNTY OF MAUI  
200 S. HIGH STREET  
WAILUKU, MAUI, HAWAII 96793  
[www.MauiCounty.us](http://www.MauiCounty.us)

October 16, 2017

MEMO TO: Patrick K. Wong  
Corporation Counsel

F R O M: Mike White  
Council Chair

A handwritten signature in black ink, appearing to be "Mike White", is written over the printed name and title.

SUBJECT: **OPINION REGARDING EFFECTIVE DATE OF AMENDMENT TO  
MAUI COUNTY CHARTER SECTION 6-2 RELATING TO REVIEW  
OF APPOINTMENTS OF COUNTY DIRECTORS BY THE COUNCIL**  
(17-235)

This letter is in response to your memorandum dated October 12, 2017 issued in response to my request to you dated October 7, 2017. In your reply, you mention that due to time constraints, you were unable to exhaustively research this matter and therefore offered a brief explanation.

At this time, I invite you to give a more thorough explanation for your legal conclusions. Please note that the Mayor's letter dated September 29, 2017 seeking Council confirmation of the Mayor's nominee for Finance Director is posted on the Council's meeting of Friday, October 20, 2017. I expect at that time the request will be referred to the appropriate standing committee for consideration.

I would appreciate receiving a more detailed response from you by the close of business on **Wednesday, October 25, 2017** so that it may be distributed to councilmembers prior to committee meetings scheduled for the week of October 30, 2017. To ensure efficient processing, please include the relevant PAF number in the subject line of your response.

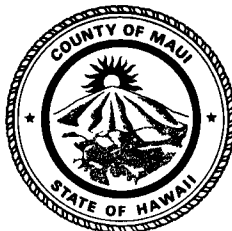
Patrick K. Wong  
October 16, 2017  
Page 2

Should you have any questions, please contact me or Supervising  
Legislative Attorney Greg Garneau at ext. 7664.

paf:gjg:17-235b

cc: County Clerk  
Supervising Legislative Attorney

ALAN M. ARAKAWA  
Mayor



PATRICK K. WONG  
Corporation Counsel


EDWARD S. KUSHI  
First Deputy

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DEPARTMENT OF THE CORPORATION COUNSEL  
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MEMO TO: Mike White  
Council Chair

FROM: Jeffrey Ueoka   
Deputy Corporation Counsel

DATE: October 24, 2017

SUBJECT: **OPINION REGARDING EFFECTIVE DATE OF AMENDMENT  
TO MAUI COUNTY CHARTER SECTION 6-2 RELATING TO  
REVIEW OF APPOINTMENTS OF COUNTY DIRECTORS BY  
THE COUNCIL** (PAF 17-235))

We are in receipt of your invitation for a more thorough response to the question regarding the effective date of the amendment to Section 6-2, Revised Charter of the County of Maui (1983), as amended ("Charter"), relating to the review of appointments of County directors by Council. While we appreciate the additional time, an exhaustive review of this matter would take weeks, if not months, and may prove fruitless as it does not appear that these same issues have arisen in Hawaii caselaw. However, we will take this additional time to provide you with a more detailed explanation as to our previous recommendation, that at this time, the Council has the authority to confirm or deny the Mayor's nominee for Finance Director.

In coming to our recommendation it is important to look at the specific language of the Charter. The Hawaii Supreme Court has held, in regards to statutory interpretation:

First, the fundamental starting point for statutory interpretation is the language of the statute itself. Second, where the statutory language is plain and unambiguous, our sole duty is to give effect to its plain and obvious meaning. Third, implicit in the task of statutory construction is our foremost obligation 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. Fourth, when there is doubt, doubleness of meaning, or indistinctiveness or uncertainty of an expression used in a statute, an ambiguity exists. And fifth, 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. *Awakuni v. Awana*, 115 Hawaii 126, 133, 165 p.3d 1027, 1034 (2007) citing *Peterson v. Hawaii Elec. Light Co., Inc.*, 85 Hawaii 322, 327-28, 944P.2d 1265, 1270-1271 (1997)

Section 14-1 of the Charter provides for multiple methods for which a charter amendment may be initiated, one of the methods is by a resolution adopted by the Council. It is important to distinguish the initiation of the charter amendment and the proposed amendment. Nothing in the Charter states that the resolution initiating the charter amendment automatically becomes the proposed amendment to the Charter. While it is easy to make the presumption that the language contained in Resolution 16-96 would be the proposed amendment, Section 14-2(2) of the Charter requires that the proposed amendments be published in a newspaper of general circulation prior to the election. Therefore, it is our understanding that the language published in the newspaper was the “proposed amendment” and the language in the resolution initiating the charter amendment would not take precedence.

While Resolution 16-96 clearly stated that the intent of the Council was for the proposed amendment to take effect on January 1, 2019, it is our understanding that the proposed amendment published in the newspaper did not fix an effective date for the amendments. Section 14-3 of the Charter states:

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

The Charter clearly states that in the absence of a stated effective date, the charter amendment shall become effective thirty days after its adoption. While we understand the Council’s frustration, in the absence of a stated effective date in the proposed amendment, we feel that the failure to have the Charter amendment become effective thirty days after its adoption could be legally challenged.

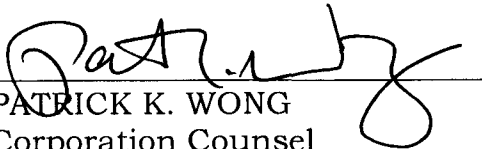
Attached to the initial memorandum requesting an opinion to our office was the Supreme Court’s decision in *Kahalekai v. Doi*, 60 Haw. 34, 590 P.2d 543 (1979). The Court in *Kahalekai* focused on the appropriateness of the ballot questions in regards to Constitutional amendments. While we understand that



one could look to *Kahalekai* for guidance as to whether the Council's intent set forth in Resolution 16-96 should be considered when determining the effective date of the charter amendments, we feel that the issue at hand is centered on the charter requirement that in the absence of an alternative effective date in the proposed amendment a charter amendment becomes effective thirty days after its adoption. *Kahalekai* does not address what controls in the event of a conflict between the initiating legislation and language of the proposed amendment, however the Court in *Kahalekai* does address the issue of "misleading or deceptive" language in the ballot question. While we feel the proposed amendment language was acceptable as presented on the ballot, because the Charter explicitly provides for the situation where the proposed amendment is silent as to the effective date, we feel that the use of the effective date contained in Resolution 16-96 could be seen as "misleading or deceptive". It is impossible for us to determine whether this would have swayed voters and we understand that a voter could have read Resolution 16-96 and assumed that the proposed amendment would become effective on the date listed in the Resolution. However, in the interest of transparency in government and providing the public an opportunity to have input in a government proceeding, we feel that in an abundance of caution, the Council should go through the process of confirming or denying the Mayor's appointment to Finance Director.

In conclusion the focus of our analysis was on what constitutes the "proposed amendment" and based on our reading of Section 14-2(2) of the Charter, we feel that the proposed amendment is the language that was published in the newspaper and that while the language of Resolution 16-96 indicates a January 2, 2019 effective date, it is simply the language initiating the Charter amendment and not the proposed amendment itself.

APPROVED FOR TRANSMITTAL:

  
PATRICK K. WONG  
Corporation Counsel  
2017-1262  
2017-10-24 Memo to Chair