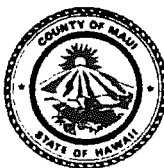


JAMES "KIMO" APANA
Mayor



JAMES B. TAKAYESU
Corporation Counsel

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DEPARTMENT OF THE CORPORATION COUNSEL

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OFFICE OF THE
COUNTY COUNCIL

December 17, 1999

TO: Patrick S. Kawano
Council Chair

FROM: Brian T. Moto
Deputy Corporation Counsel

SUBJECT: Charter Requirement of Independent Audit of Finance
Director's Accounts

A handwritten signature in dark ink, appearing to read "Brian T. Moto", is written over the "FROM:" line of the memorandum.

Introduction.

The purpose of this memorandum is to respond to your request for legal advice made by memorandum, dated November 17, 1999, to James B. Takayesu, Corporation Counsel.

Issue presented.

Your memorandum requests advice as to whether an independent audit of the finance director's accounts is required in light of the recent reassignment of Patrick Y.P. Nitta, former director of finance, to a position within the Office of the Mayor.

Conclusion.

Pursuant to Section 9-13, Revised Charter of the County of Maui ("Charter"), the Council is required to cause an independent audit to be made of the accounts of the director of finance. The scope of the audit should include those accounts, if any, pertaining to the transactions and obligations of the director of finance as an individual.

Analysis.

Effective November 1, 1999, Patrick Y.P. Nitta, former director of finance, was reassigned as Chief of Staff in the Office

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Submitted by BF Committee Chair (BF-94)

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of the Mayor. Effective that same date, Wesley P. Lo assumed the duties and responsibilities of director of finance.

Charter Section 9-13, pertaining to the audit of accounts, states, in relevant part, as follows:

In case of the death, resignation or removal of the director of finance, the council shall cause an independent audit to be made of the finance director's accounts.

The Supreme Court of Hawaii has stated:

The interpretation of the [C]harter is similar to the interpretation of a statute. And . . . our foremost obligation is to ascertain and give effect to the intention of the legislature[,] which is to be obtained primarily from the language contained in the statute itself.'

Maui County Council v. Thompson, 84 Hawaii 105, 106, 929 P.2d 1355, 1356 (1996).

Although Charter Section 9-13 does not use or reference the term "reassignment", we believe that Mr. Nitta's "reassignment" in effect constitutes a resignation or departure from the office of Director of Finance so as to fall within the circumstances governed by Charter Section 9-13. This conclusion is consistent with the apparent purpose of Charter Section 9-13, which is to provide for an independent review of certain accounts under the control of a County officer who, under the Charter, has the authority and responsibility, among other things, to keep account of receipts and disbursements,¹ maintain and manage the treasury and deposit County moneys,² prepare and issue warrants and checks,³ and submit statements of revenues and expenditures and of financial condition.⁴

Charter Section 9-13 does not define the term "finance director's accounts"; however, inasmuch as the first paragraph of Section 9-13, pertaining to the annual independent audit, employs

¹Charter §8-4.3.3.

²Charter §8-4.3.4.

³Charter §8-4.3.7.

⁴Charter §8-4.3.14.

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different terms when referring to the full scope of accounts of the County, we conclude that "finance director's accounts" means something less than all of County's accounts.⁵ Further, in that Charter Section 9-13 references "finance director's accounts", and not "finance department's accounts", we conclude that the required scope of the audit is something less than the entire department of finance.

A review of the history of Charter Section 9-13 indicates that the "finance director's accounts" are those accounts, if any, that pertain to the financial obligations of, and personal transactions relating to, the County finance director as an individual. In particular, prior to its 1983 revision, the Charter's provisions on the audit of accounts read, in pertinent part, as follows:

Upon the death, resignation, removal or expiration of the term of any county administrative officer, including the administrative head of the office of council services, the director of finance shall cause an audit and investigation of the accounts maintained by the officer and by his department or agency to be made, and shall report the results thereof to the mayor and the council. In case of the death, resignation or removal of the director of finance, the council shall cause an

⁵The first paragraph of Charter §9-13 states:

Within six (6) months after the beginning of each fiscal year, the county council shall provide for an independent audit of the accounts and other evidences of financial transactions of the county and of all operations for which the county is responsible. The audit shall be made by a certified public accountant or firm of certified public accountants, designated by the council, who have no personal interest, direct or indirect, in the fiscal affairs of the county or any of its operations. The audit shall include both financial accountability and adequacy of the financial and accounting system. If the State makes such an audit, the council may accept it as satisfying the requirements of this section. The scope of the audit shall be in accordance with the terms of a written contract to be signed by the council chairman, which contract shall encourage recommendations for better financial controls and procedures and shall provide for the completion of the audit within a reasonable time after the close of the previous fiscal year. A copy of the audit reports shall be filed with the county clerk and shall be a public record.

independent audit to be made of his accounts. If, as a result of any such audit, an officer be found indebted to the county, the mayor shall proceed forthwith to collect the indebtedness.

Charter of the County of Maui (1977), §9-12.⁶

Under this earlier version of the Charter, when the director of finance died, resigned, or was removed an independent audit was required to be made of "his" accounts.⁷ Moreover, the Charter required the mayor "to collect the indebtedness" found as a result of the audit. This reference to the collection of any outstanding indebtedness indicates that the purpose of the independent audit was, and is, to identify and review matters relating to personal transactions and obligations, if any, of the finance director.⁸ Such obligations would include, for example, any County taxes or fees owed by the finance director as an individual. We therefore conclude that the appropriate scope of the audit includes those accounts, if any, pertaining to the transactions and obligations of the finance director as an individual.

Further, in that Charter Section 9-13 requires an "independent" audit, the audit should "be made by a certified public accountant or firm of certified public accountants, designated by the council, who have no personal interest, direct or

⁶Section 9-12 of the 1977 Charter, subheaded "Audit of Accounts", was renumbered under the 1983 Revised Charter, and is now Section 9-13. Unfortunately, neither the Report of the Charter Commission, dated February 27, 1976, nor the Report of the Charter Commission, dated October 18, 1982, provide any detail regarding the Charter provisions that are the subject of this memorandum.

⁷It is noteworthy that §9-12 of the 1977 Charter distinguished the "expiration of the term" of a county officer from such officer's "death, resignation, [or] removal". This indicates that current Charter §9-13 requires an audit of accounts upon the death, resignation or removal of the director of finance, but not, however, upon the director's expiration of term.

⁸The 1983 Revised Charter deleted the provision relating to the mayor's duty to collect any indebtedness as well as the provision requiring an audit in the event of the death, resignation, removal, or expiration of term of county administrative officers other than the finance director.

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indirect, in the fiscal affairs of the county or any of its operations."⁹

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cc: James B. Takayesu, Corporation Counsel
Wesley P. Lo, Director of Finance
Ty Yoshimi, Accounts Division Administrator

⁹Charter §9-13.

