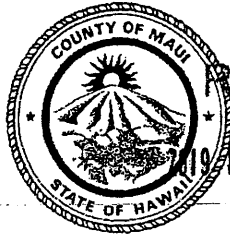


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OFFICE OF THE
COUNTY CLERK

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2019 FEB 21 PM 2:42

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MEMO TO: Kelly T. King
Chair, Maui County Council

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

DATE: February 21, 2019

SUBJECT: **APPROVAL AND DISAPPROVAL OF MAYOR'S
APPPPOINTMENTS FOR DEPARTMENT HEADS**

Given the limited time to reply to your request of February 19, 2019, we respond as follows:

1) The Council recessed its meeting of February 15, 2019 to February 22, 2019. If the Council adopts a resolution disapproving an appointment on February 22nd, when must the nominee vacate office? Does your answer depend on when the February 15th meeting adjourns? Does your answer depend on when the County Clerk has transmitted a certified copy of the resolution to the Mayor?

Response: The disapproved nominee should vacate the subject office upon the Mayor's receipt of certified copy of the Council's resolution disapproving such nominee. The Council's legislative "act" of confirming or denying any such nominee shall be by ordinance or resolution. See Section 4-1 of the Revised Charter of the County of Maui (1983) (herein referenced as the "Charter").

2) Once a disapproved appointee has vacated office and prior to the Mayor's nomination of another appointee to run the relevant department, who is in charge of the department? If your answer is the department's Deputy Director,

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Chris M...

please identify the relevant Charter provision, if any, supporting the answer. If your answer is the department's Deputy Director, please advise who is in charge of the department if the position of Deputy Director is also vacant.

Response: It would be the Deputy Directors, or in the case of the Corporation Counsel and Prosecutor offices, the 1st deputies of the various departments. We could find no direct, relevant Charter provision(s) to support this statement; however, it is clearly understood, intended and accordingly compensated by the Salary Commission that in the absence of a director, for whatever reason, the deputy or 1st deputy is in charge of the day to day operations of a department.

In the event the position of a deputy or 1st deputy is also vacant, the Mayor has the authority to appoint a temporary administrative head of any department.¹

3) Identify the official with the authority to appoint the Deputy Director for each department in which a mayoral appointee is the Director. Please identify the relevant Charter provision, if any, supporting your answer.

Response: With some exceptions, the appointing authority with respect to appointment of deputy directors would be the associated director of the department.² However, as the chief executive officer of the county, the mayor shall "Appoint the necessary staff for which appropriations have been made by the council."³

Concerning the exceptions, the Corporation Counsel and the Prosecuting Attorney shall appoint such deputy corporation counsels or deputy prosecuting

¹ Section 6-1(4), Charter, which states:

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.

² Section 6-3(1), Charter, which states:

1. Pursuant to law the administrative heads of departments shall have the power to take all personnel actions.

Section 6-2(1), Charter, which states:

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

Section 13-1(4)(c), Charter, which in relevant part states:

4. The term "officer" shall include the following:

.....
.....

c. The first deputy appointed by the administrative head of any department.

.....

Section 13-2(12), Charter, which states:

12. The deputies of the administrative head of any department shall be appointed by the administrative head without the necessity of confirmation by any commission or board.

³ Section 7-5(2), Charter.

attorneys and necessary staff as shall be authorized by the council.⁴ Further, the deputy director of the Department of Water Supply is specifically appointed by the Mayor.⁵

4) If the Council disapproves an appointment and the Mayor fails to nominate another appointee within 60 days, may the Council appoint the department's Director?

Response: No.

In contrast to the process for appointments to boards and commissions, there is no "default" provision in Section 6-2(5) for the Council to nominate and approve department directors in the event the Mayor fails to nominate a subsequent director within the prescribed period.⁶

Further, unless the Charter is amended to so authorize, any attempt by the council to "...dictate the appointment or removal of any officer or employee appointed by the mayor or by the mayor's subordinates." would be in violation of the existing Charter provision.⁷

5) Does the Council have the authority to enact ordinances for the following purposes:

a) Establishing the appointment authority and qualifications for nominations to the position of Deputy Director for any department in which a mayoral appointee is the Director.

Response: No.

Generally, ordinances that are in conflict with or contrary to Charter provisions are null and void. Based on the above discussion, it is clear that the appointing authority, albeit subject to council confirmation, for department directors is the mayor. It is further clear that the appointing authority for deputy or 1st deputy directors is either the mayor or the associated department director.

Accordingly, a Charter amendment would be needed to authorize council-enacted ordinances to change and/or amend existing provisions regarding the

⁴ Sections 8-2.3(1), and 8-3.3(1), Charter.

⁵ Section 8-11.5, Charter.

⁶ Sections 13-2(16) and (17), Charter, have identical provisions that state, in relevant part:

"If the mayor fails to submit the name of a nominee within the times provided for herein, the council may within sixty (60) days nominate and approve the appointment of an individual to fill the vacancy."

⁷ Section 3-8(1), Charter.

appointing authority for deputy or 1st deputy directors, as well as to establish additional qualifications for said deputy or 1st deputy directors.⁸

b) Establishing the appointment authority and qualifications for the official to be in charge of any department in which a mayoral appointee is the Director if the positions of Director and Deputy Director are both vacant.

Response: No, unless the Charter is amended to so authorize.

c) Establishing that, if the Council disapproves an appointment and the Mayor fails to nominate another appointee within 60 days, the Council shall appoint the department's Director.

Response: No. Charter section 6-2(5) would need to be amended.

APPROVED FOR TRANSMITTAL:


PATRICK K. WONG
Acting Corporation Counsel
memo to king 2.21.19

⁸ We note that the Charter was amended in 2016 to authorize the council to add qualifications for administrative heads by ordinance. See section 6-4, Charter.