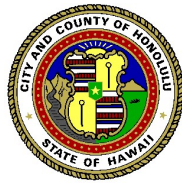


DEPARTMENT OF THE CORPORATION COUNSEL
CITY AND COUNTY OF HONOLULU

530 SOUTH KING STREET, ROOM 110 * HONOLULU, HAWAII 96813
PHONE: (808) 768-5193 * FAX: (808) 768-5105 * INTERNET: www.honolulu.gov

RICK BLANGIARDI
MAYOR



DANA M.O. VIOLA
CORPORATION COUNSEL

KRISHNA F. JAYARAM
FIRST DEPUTY CORPORATION COUNSEL

September 23, 2021


MEMORANDUM

TO: GARY SUGANUMA, DEPUTY ATTORNEY GENERAL

CC: BOARD OF DIRECTORS,
HONOLULU AUTHORITY FOR RAPID TRANSPORTATION

FROM: GEOFFREY M. KAM, DEPUTY CORPORATION COUNSEL

SUBJECT: LEGISLATIVE APPOINTEES TO THE HART BOARD REQUIRED BY SECTION 18 OF ACT 1, FIRST SPECIAL SESSION, 2017

 Digitally signed by
Kam, Geoffrey M
Date: 2021.09.23
18:06:44 -10'00'

This memorandum is issued in response to your inquiry about the validity of the position asserted by Hoyt Zia, the then-Acting Chair of the Honolulu Authority for Rapid Transportation ("HART") Board of Directors, on July 30, 2021, that the Revised Charter of the City and County of Honolulu 1973 (Amended 2017 Edition) ("RCH" or "Charter"), governs the composition of the HART Board of Directors, notwithstanding Section 18 of Act 1 (First Special Session, 2017) ("Act 1") which purported to add four legislative appointees to the HART Board.

It is our conclusion that the Hawaii State Legislature is not empowered to appoint four non-voting, ex-officio members to the HART Board of Directors, in contravention of the HART Board membership prescribed by the Charter. For the reasons explained below, the Charter prescribes the membership of the HART Board and is superior to conflicting State law.

In accordance with the principle of home rule, the Hawaii State Constitution dictates that charter provisions with respect to a county's elective, legislative and administrative structure and organization are superior to State laws.

Article VIII, section 2 of the Hawaii State Constitution provides as follows:

Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general

law. Such procedures, however, shall not require the approval of a charter by a legislative body.

Charter provisions with respect to a political subdivision's executive, legislative and administrative structure and organization shall be superior to statutory provisions, subject to the authority of the legislature to enact general laws allocating and reallocating powers and functions.

A law may qualify as a general law even though it is inapplicable to one or more counties by reason of the provisions of this section.

(Emphasis added.) This constitutional provision created what is commonly known as “home rule.” The Standing Committee Report explaining this provision stated, in part:

As presented by your Committee, therefore, the area which the proposal places beyond legislative control is limited to charter provisions as to the executive, legislative and administrative structure and organization of the political subdivision. **For example, the legislature could not change the composition of the legislative body of a county.** However, the proposal specifically preserves the authority of the legislature to enact general laws allocating and reallocating powers and functions. This means that the legislature could transfer a function from the county to the state level even if the result would be to eliminate a department of the county government provided for in its charter.

Vol. 1, Proceedings of the Constitutional Convention of Hawaii of 1968, 229 (emphasis added).

In Hawaii Gov't Employees Ass'n v. County of Maui (hereinafter “HGEA”), the Hawaii Supreme Court reiterated:

It is beyond question that the 1968 Constitutional Convention delegates intended that county charters acquire a stature which would resist legislative interference in certain areas. Not only does the above quoted committee report by the Committee on Local Government but, additionally, the debates in the Convention's Committee of the Whole clearly indicate that **the thrust of the constitutional amendment was give the charter certain basic stability against legislative encroachment.**

59 Haw. 65, 75-76, 576 P.2d 1029, 1036 (1978) (emphases added, internal citations omitted).

In HGEA, the Hawaii Supreme Court reinforced the principle of home rule authority, specifically as applied to the composition of county boards and commissions when it determined that the Maui Charter provisions were superior to the conflicting statutes with respect to the makeup of the Maui Board of Water Supply and the Maui Police Commission because their functions were local as distinguished from State functions. Similarly, mass transit has been delegated to the counties as a county function.

Section 51-1 of the Hawaii Revised Statutes provides as follows:

§ 51-1 Grant of powers. Every county of this State may acquire, condemn, purchase, lease, construct, extend, own, maintain, and operate mass transit systems, including, without being limited to, motor buses, street railroads, fixed rail facilities such as monorails or subways, whether surface, subsurface, or elevated, taxis, and other forms of transportation for hire for passengers and their personal baggage.

Every county shall have power to provide mass transportation service, whether directly, jointly, or under contract with private parties, without the county or private parties being subject to the jurisdiction and control of the public utilities commission in any manner.

The terms "mass transit" and "mass transportation" mean transportation by bus, or rail or other conveyance, either publicly or privately owned, which provides to the public general or special service (but not including school buses or charter or sightseeing service) on a regular and continuing basis.

The purpose of the bill which became HRS § 51-1 was "to enable the counties, including the City and County of Honolulu, to engage in the development of mass transportation systems." See S. Stand. Comm. Rep. No. 917, in 1967 Senate Journal, at 1253. A committee report regarding the bill states:

Your committee concurs that **each county should be authorized to establish a mass transportation system in accordance with its own timetable and rate of development. This is in line with the concept of home rule,** which has been supported in this and other sessions by our legislative body.

Id. at 1254 (emphases added). Therefore, the authority to develop mass transportation systems, including the Honolulu Rail Transit Project, was vested in the counties, in deliberate conformity with the principle of home rule. It follows that the composition of the board in charge of Honolulu's mass transportation project is also a matter of home rule and properly governed by Charter provisions duly adopted by the electorate.

Finally, the provisions of Act 1 adding legislative appointees to the HART Board are not only contrary to the Charter, but are also contrary to the expressed will of the electorate. Pursuant to Resolution 17-288, a ballot question was presented at the 2018 general election to amend the Charter to eliminate the conflict of Act 1 with the Charter by adding the legislative appointees to the HART Board in order to resolve the home rule issue. Oahu voters specifically rejected the amendment, with 52.8% voting "no" and 37.5% voting "yes."

It is our conclusion that the Legislature does not have the power to seat four non-voting, ex-officio members to the HART Board of Directors. Under the Hawaii State Constitution and the fundamental principle of home rule, the City's Charter, which prescribes the membership of the HART Board of Directors, is superior to conflicting State law. The voters' rejection of a Charter amendment that would have authorized legislative appointments to the HART Board further undermines the legitimacy of the Act 1 legislative appointees and reinforces the superiority of the existing Charter provisions governing the composition of the HART Board. Based thereon, quorum for the HART Board is six of the ten members prescribed by the Charter, and a voting majority consists of six of the nine voting members prescribed by the Charter, pursuant to RCH § 13-103.1(g) and (i).