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Subject: Possible charter review amendments by Del Pranke

Part 1

Issue #1

The Hawaii County Charter has a massive conflict concerning the Office of the Corporation Counsel. Where the Charter reads:

Section 6-5.3. Powers, Duties and Functions.

The corporation counsel shall be the chief legal advisor and legal representative of all county agencies, the council and all officers and employees in matters related to their official powers and duties.

a legal conundrum exists. For the corporation counsel to advise both commissions, which may from time to time perform quasi-judicial activities, such as determining if an officer or employee of the county has committed an offense against county rules or laws, and the employee or officer who might from time to time come before that commission, seems to violate a most basic tenet of the American system of law, that is, both sides being advised by the same law corporation. I don't believe any judge would allow such a situation to exist anywhere else in our system of legal jurisprudence.

Issue #2

Our county charter sets up a system of boards and commissions to help run and regulate our county government. It fails to make a distinction, however, between what are boards and what are commissions.

A board is a committee used by the executive branch or the legislative branch to help operate various limited activities of the government. An example would be, The Water Board.

A commission is a committee which once appointed, continues about its activities free from control or influence by the executive or the legislative branches. Examples would be, The Police Commission, The Fire Commission, and SHOULD include The Ethics *Commission*. We have mistakenly mistitled it The Ethics Board. In the opinion of this writer and others who have had dealings with it as it exists, it would seem that past experience has shown that the executive branch has used it as a board to advance political rather than ethical processes. The simple act of defining boards as opposed to commissions in the charter, properly, would go along way toward improving the public attitude as to whether the county government is fair and impartial.

Issue #3

This is related to issue #1. Allowing the corporation counsel, an agent of the executive branch be the legal advisor for the county council is on the face of it, legally absurd. In practice it has come to a boil in some cases in the past. Most recently, in the case of the reorganization of the council, where the council was split, and the corporation counsel gave advice favoring one side of the split, and opposed, actively opposed, the opinions of the other members of the council.

Section 6-5.3. Powers, Duties and Functions.

The corporation counsel shall be the chief legal counsel for all agencies administered by the executive branch. This shall include all boards, all county employees and officers who are employed by the executive branch. The county council is empowered to obtain council, called the legislative counsel, to perform the same function for the legislative branch.

Part 2

Issue #4

The corporation counsel is called to give opinions to county entities in public rather often. It is only my layman's observation, but I thought that the attorney/client privilege is absolute. It would seem to me that the charter should have a provision as to when the corporation counsel should be allowed to break such privilege, since using the privilege is ostensibly to further the good of the public. Therefore, having the corporation counsel testifying in public before any board or the county council should not be allowed, unless the testimony is that of a private citizen, and not as a legal advisor.

Part 3

Issue #5

Shouldn't lying be a violation of the Hawaii County Code? By not condemning lying to a member or members of the public, or other officers or employees of the county we are saying that such an activity is condoned in the government of Hawaii County. Such a provision can be included in the code of ethics by this commission simply letting the voters decide whether to add a part to section 14-4 of the county charter to read:

(d) It shall be a violation of the code of ethics of Hawaii County for any officer or employee of the county to lie to any other person while conducting county business.

Part 4

Issue #6

The state of the "sunshine law". The following portion of the "state sunshine" law needs to be addressed by charter amendment. The corporation counsel cannot, with impartiality, both advise county entities concerning the "sunshine law" and be their legal advisor when a violation of the law is alleged to have been made. The law is made to encourage transparency. The corporation counsel cannot give legal counsel to those who may have violated the law, and still have the public good in mind. it violates a tenet of the legal system. Corporation council does not work for the public as a whole, the way the system is set up now.