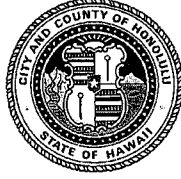


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

715 SOUTH KING STREET, SUITE 211, HONOLULU, HAWAII 96813-3091
Phone: (808) 768-7786 · Fax: (808) 768-7768 · EMAIL: ethics@honolulu.gov
Internet: www.honolulu.gov/ethics

MUFI HANNEMANN
MAYOR



CHARLES W. TOTTO
EXECUTIVE DIRECTOR & LEGAL COUNSEL

Committee on Intergovernmental and Military Affairs
Testimony of the Honolulu Ethics Commission
on H.B. No. 660
Hearing Monday, February 11, 2008
1:15 p.m.
Conference Room 229

Good afternoon Chair Inouye. My name is Chuck Totto and I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission. This bill would confer on the circuit court in each county jurisdiction over the impeachment of county officers who are subject to impeachment under the applicable county law.

The Commission **supports** H.B. No. 660 because the bill is needed to ensure a legally valid venue to try impeachment cases. In that way the bill will promote ethics in government.

When this bill was heard in the 2007 session, the Hawaii, Maui and Kauai Boards of Ethics also supported this bill. I do not know if they have had the chance to submit testimony in this session. In addition, the Administrative Director of the Courts has stated that he has no objection to the bill.

Each county has laws that permit impeachment of certain county officers for misconduct, including violations of the respective county's ethics laws. For example, a violation of one of the City and County of Honolulu's ethics laws is a basis for impeachment of an elected officer. *See*, Revised Charter of Honolulu Section 11-106.

The impeachment process is partly political and partly adjudicative in nature. The political component requires a minimum number of qualified voters to sign a

petition for impeachment against the officer. As to the adjudicative part, the current law in each county attempts to create jurisdiction in the courts to hear such cases once the petition is certified.

However, the Hawaii Constitution permits only the Legislature, not the counties, to confer jurisdiction on the courts.¹ Therefore, it is very likely that the current law in each county is invalid in its attempt to establish the jurisdiction of the courts. Of course, if the court does not have jurisdiction to hear the case, the case would be dismissed.

As a practical matter, circumstances that give rise to impeachment will include allegations of egregious misconduct by a top-level county officer, often accompanied by highly charged political implications. It is critically important for the public to have a valid process available. Without a proper venue to hear an impeachment case, the democratic process expressed in each county charter would be significantly undermined.

Thank you for allowing me to testify in support of H.B. No. 660.

¹ See, Hawaii Constitution, Article VI, Section 1 (“The several courts shall have original and appellate jurisdiction as provided by law . . .”); *Sherman v. Sawyer*, 63 Haw. 55, 57, 621, P.2d 346, 348 (1980) (the Hawaii Constitution vests the Hawaii Legislature with the power to establish subject matter jurisdiction for the state courts); *Tax Appeal of the County of Maui v. KM Hawaii, Inc.*, 81 Haw. 248, 254, 915 P.2d 1349, 1355 (1996); and, Stand. Comm. Report No. 37, in *1 Proceedings of the Constitutional Convention of 1950*, at 174 (1960) (“[T]he jurisdiction of the several courts is left to the Legislature.”)