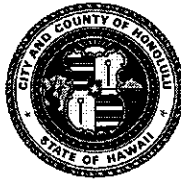


ETHICS COMMISSION
CITY AND COUNTY OF HONOLULU

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MAYOR

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Committee on Judiciary and Labor
Testimony on H.B. No. 660
Hearing Tuesday, April 1, 2008
10:00 a.m.
Conference Room 016

Good morning Chair Taniguchi, Vice Chair Hee and members of the Committee.

My name is Chuck Totto and I am the Executive Director and Legal Counsel for the Honolulu Ethics Commission (the "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 will ensure a legally valid venue to try impeachment cases involving county officers. In this 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. I am unaware of any opposition to this measure.

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 part political and part 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 as it attempts 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 legal process in place to decide impeachment without favoritism or bias. Without a proper venue to hear an impeachment case, the democratic process expressed in each county charter would be rendered useless.

Thank you for allowing me to testify in support of this measure.

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 *I Proceedings of the Constitutional Convention of 1950*, at 174 (1960) (“[T]he jurisdiction of the several courts is left to the Legislature.”)