

CHAPTER 50
CHARTER COMMISSIONS

Section

- 50-1 Applicability
- 50-2 Definitions
- 50-3 Charter commissions
- 50-4 Qualifications of commission members
- 50-5 Commission organization and procedures
- 50-6 Duties and functions of commissions
- 50-7 Powers of the commission
- 50-8 Submission of proposed charter to legislative body of
the county
- 50-9 Submission of proposed charter to county clerk
- 50-10 Publication and submission to electors
- 50-11 Charter amendment and revision
- 50-12 Tenure of commission
- 50-13 Compensation of commission members
- 50-14 Appropriations and disbursements
- 50-15 Reserved powers

" **§50-1 Applicability.** All counties which do not have a charter and all counties which have a charter may create a charter commission as provided herein. No provision of this chapter shall be held to alter or restrict any provision of any existing charter, except as hereinafter specifically provided. [L 1963, c 73, pt of §2; am L 1965, c 65, §1(1); Supp, §143A-1; HRS §50-1]

Case Notes

Charter framed and adopted under this chapter and State Constitution may be amended by the legislature by a general law. 50 H. 277, 439 P.2d 206.

" **§50-2 Definitions.** Whenever used in this chapter, unless a different meaning clearly appears from the context:

"County" or "counties" means the city and county of Honolulu and the counties of Hawaii, Kauai, and Maui.

"Legislative body of the county" means the county council. [L 1963, c 73, pt of §2; Supp, §143A-2; HRS §50-2]

Revision Note

Definition of "chairman of the county" deleted as obsolete. Definition of "legislative body of county" revised by deleting references to board of supervisors and to city council of Honolulu.

" **§50-3 Charter commissions.** The mayor of each county may appoint successive charter commissions with the approval of the legislative body of the county. The commission shall consist of eleven members, one of whom shall be appointed by the mayor as the chairperson of the commission. Any vacancy in the membership of the commission shall be filled by the mayor of the county with the approval of the legislative body of the county. [L 1963, c 73, pt of §2; am L 1965, c 65, §1(2); Supp, §143A-3; am L 1967, c 235, §1(1); HRS §50-3; gen ch 1985, 1993]

Revision Note

"Mayor" substituted for "chairman".

Cross References

Mandatory review, see county charters.

Attorney General Opinions

Under former law, no authorization for appointment of successive commissions. Att. Gen. Op. 65-3.

" **§50-4 Qualifications of commission members.** Each charter commission member shall be a registered voter and resident of the county for at least three years prior to the member's appointment. Elected officials of the state or county governments shall not be eligible for appointment. [L 1963, c 73, pt of §2; Supp, §143A-4; HRS §50-4; gen ch 1985]

Attorney General Opinions

Under §78-4 member of board or commission is not eligible for appointment to charter commission. Att. Gen. Op. 63-29.

" **§50-5 Commission organization and procedures.** No later than fifteen days after its members are appointed, the charter commission shall organize and hold its first meeting and shall adopt such rules and regulations for the conduct of its business as it deems necessary and desirable. Chapter 91 shall not be applicable hereto. The majority of the members of the commission shall constitute a quorum for the transaction of business. [L 1963, c 73, pt of §2; Supp, §143A-5; HRS §50-5]

" **§50-6 Duties and functions of commissions.** The charter commission shall study and analyze the existing governmental structure of the county for the purpose of securing information that will enable it to draft a proposed charter adapted to the requirements of the county and designed to provide for the people of the county, a more efficient and responsible form of government. The study of any subject relevant to the government, property, or other affairs of the county, or of the laws relating thereto, or of any matter or thing deemed by the commission to be pertinent thereto, and consistent with the purpose for which the commission was created, shall be deemed within the scope of the commission's work. If, after its study, the commission decides that a charter is not desirable, it shall so report to the legislative body of the county and by resolution of the legislative body of the county the commission shall be dissolved. If, however, the commission decides to draft a charter, the charter shall set forth the structure of the county government, the manner in which it is to operate, the powers of the county in local affairs, and shall provide for orderly transition from the present government to government under the charter. [L 1963, c 73, pt of §2; Supp, §143A-6; HRS §50-6]

" **§50-7 Powers of the commission.** The charter commission shall hold public hearings and sponsor public forums and in general provide for the widest possible public information and discussion respecting the purpose and progress of its work. It shall receive the assistance of any officer or employee of the county without extra compensation as it may request to carry out its functions. It may, with the approval of the legislative body of the county, appoint staff members and consultants as it deems necessary. [L 1963, c 73, pt of §2; Supp, §143A-7; HRS §50-7]

" **§50-8 Submission of proposed charter to legislative body of the county.** Within one year of its appointment, the charter commission shall submit a report in writing on its activities, findings, and recommendations to the legislative body of the county together with a draft of the proposed charter. The legislative body of the county may in turn propose one or more sections as alternative, or alternatives to any section of the proposed charter; provided that there shall not be more than a single proposition under any alternative proposal. Within thirty days after the receipt of the proposed charter from the commission, the legislative body shall return the proposed charter with the alternatives to the commission for its study. [L 1963, c 73, pt of §2; Supp, §143A-8; am L 1967, c 235, §1(2); HRS §50-8]

Case Notes

Cited: 49 H. 336, 417 P.2d 977.

" **§50-9 Submission of proposed charter to county clerk.** If the legislative body of the county proposes no alternative sections to the charter, the charter commission shall submit a draft of the proposed charter to the county clerk within thirty days after it has received the charter from the legislative body. If alternatives are submitted by the legislative body of the county to the commission, then the commission shall accept or reject the alternatives within thirty days after the charter has been returned to it and shall report to the legislative body of the county any rejection. The legislative body of the county may within ten days after receiving such notification recall any or all of the alternative proposals rejected by the commission. Upon the expiration of the time for recall by the legislative body as provided herein or sooner with the consent of the legislative body the commission shall submit to the county clerk the proposed charter together with any alternatives proposed by

the legislative body of the county which have not been accepted by the commission and incorporated in its draft. [L 1963, c 73, pt of §2; Supp, §143A-9; am L 1967, c 235, §1(3); HRS §50-9]

Case Notes

Cited: 49 H. 336, 417 P.2d 977.

" **§50-10 Publication and submission to electors.** The county clerk shall provide for the submission of the proposed charter with any alternatives, as provided by section 50-9, to the qualified electors of the county for approval at a general election or special election to be held on the date determined by the charter commission; provided the special election shall not be held within thirty days before the closing of the date for filing nominations for regular county elections. The commission shall provide for the publication of the proposed charter with any alternatives twenty-one days before the election, in a newspaper of general circulation within the county.

The form of ballot shall be prepared for the county clerk by the commission. The form of the ballot, including such explanatory material as may be necessary, shall be substantially as follows:

Shall the proposed charter of the
County of be adopted? Yes No

In the event alternatives are included in the ballot, the alternatives, including such explanatory material as may be necessary, shall be submitted in substantially the following form:

Shall the proposed charter of the
County of with alternative
No. (here state the substance
of the alternative) be adopted? Yes No

Each elector may vote for the proposed charter and for any proposed alternative. Blank ballots and spoiled ballots shall not be counted in determining the majority of the votes. Any proposition receiving a majority of the votes cast at the charter election shall be considered approved by the electors. If the proposed charter and any of the proposed alternatives receive a majority of the votes cast at the election, the proposition receiving the larger majority shall supersede the proposition with the smaller majority. The laws and rules

governing elections, so far as applicable and not inconsistent with this chapter, shall apply to elections held pursuant to this chapter.

Upon adoption, the charter shall become the organic law of the county and shall supersede any existing charter and all laws affecting the organization and government of the county which are in conflict therewith. [L 1963, c 73, pt of §2; am L 1965, c 65, §1(3); Supp, §143A-10; am L 1967, c 235, §1(4); HRS §50-10]

Cross References

Election laws, see Title 2.

Attorney General Opinions

County may not supersede §78-5 by adopting contrary provision in its charter. Att. Gen. Op. 72-15.

Case Notes

Provisions in charters must be limited to self-government and be within such limits and procedures as prescribed by general law. 56 H. 582, 545 P.2d 684.

Provisions of Maui Charter on the departments of water supply, police and liquor control relate to organization and government of the county and supersede conflicting statutes. 59 H. 65, 576 P.2d 1029.

" **§50-11 Charter amendment and revision.** Every charter established under this chapter shall provide means by which the charter may be amended or revised. The provisions for amendment and revision must provide for approval of all amendments and revisions by referendum to the electors of the county. The amendment or revision shall be considered ratified if a majority of the electors voting on the amendment or revision cast their ballots in favor of adoption. [L 1963, c 73, pt of §2; am L 1965, c 65, §1(5); Supp, §143A-12; HRS §50-11]

Case Notes

Where county charter amendment failed to indicate whether its effective date or the first term to count towards the limit of "four consecutive two year terms" was to be postponed to 1998, the amendment became effective on November 25, 1996, which was the day the amendment was "ratified" by a "majority of the electors voting on the amendment"; the first term counted towards the limit of "four consecutive two year terms" was the

term that commenced "at twelve o'clock meridian on the first Monday of December after" the 1996 election. 118 H. 355, 191 P.3d 176.

" **§50-12 Tenure of commission.** The terms of office of the members of the charter commission shall expire on the day after the election at which the proposed charter is submitted to the qualified electors of the county for approval, unless earlier terminated as provided in section 50-6. [L 1963, c 73, pt of §2; Supp, §143A-13; HRS §50-12]

" **§50-13 Compensation of commission members.** Members of the charter commission shall receive as compensation for their services the sum of \$1,000 each, and shall be reimbursed by the county for their necessary expenses incurred in the performance of their duties. [L 1963, c 73, pt of §2; Supp, §143A-14; HRS §50-13]

" **§50-14 Appropriations and disbursements.** The county legislative body shall appropriate sufficient funds for the compensation of the charter commission members, their necessary expenses, and for the effective operation of the commission including amounts necessary for hiring staff members and consultants and for defraying other reasonable expenses of the commission. The moneys shall be disbursed by the county as prescribed by law. [L 1963, c 73, pt of §2; Supp, §143A-15; HRS §50-14]

" **§50-15 Reserved powers.** Notwithstanding the provisions of this chapter, there is expressly reserved to the state legislature the power to enact all laws of general application throughout the State on matters of concern and interest and laws relating to the fiscal powers of the counties, and neither a charter nor ordinances adopted under a charter shall be in conflict therewith. [L 1963, c 73, pt of §2; Supp, §143A-16; HRS §50-15]

Law Journals and Reviews

Marsland v. First Hawaiian Bank: Home Rule and the Scope of the County Prosecutor's Power. 12 UH L. Rev. 261.

Case Notes

Generally on functions of statewide interest, if counties are not given specific authority, they cannot thwart the State. 56 H. 582, 545 P.2d 684.

"On matters of concern and interest" should be interpreted to mean "on matters of statewide concern and interest". 59 H. 65, 576 P.2d 1029.

Where a Hawaii county ordinance made the enforcement of marijuana laws the lowest enforcement priority in the county, the ordinance conflicted with the Hawaii Penal Code and covered the same subject matter that the legislature intended to govern under chapter 329, and, therefore, was preempted. 132 H. 511 (App.), 323 P.3d 155 (2014).