

**HAWAII
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1978**

**Article VII:
Local Government**

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Article VII

LOCAL GOVERNMENT

POLITICAL SUBDIVISIONS; CREATION, POWERS

Section 1. The legislature shall create counties, and may create other political subdivisions within the State, and provide for the government thereof. Each political subdivision shall have and exercise such powers as shall be conferred under general laws.

LOCAL SELF-GOVERNMENT; CHARTER

Section 2. Each political subdivision shall have power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be prescribed by general law. The prescribed 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. [Am Const Con 1968 and election Nov. 5, 1968]

TAXATION AND FINANCE

Section 3. The taxing power shall be reserved to the State except so much thereof as may be delegated by the legislature to the political subdivisions, and the legislature shall have the power to apportion state revenues among the several political subdivisions.

MANDATES; ACCRUED CLAIMS

Section 4. No law shall be passed mandating any political subdivision to pay any previously accrued claim.

STATE-WIDE LAWS

Section 5. This article shall not limit the power of the legislature to enact laws of state-wide concern.

Chapter 1

INTRODUCTION

Throughout the United States local government is a recognized necessity for effective democracy. It is necessary for 3 reasons. First, it serves as a government arm, administering the laws and directives of the state and federal governments. Second, it is responsible for handling local community problems and providing local services. Third, local government works with other government agencies to consolidate traditional government functions.

Local government is the form of government which most frequently deals directly and daily with its citizens. In Hawaii this form of government is the county. In other states it may include cities, towns, or other districts.¹

While each state has a constitution and is, under our federal system, supreme in every field where it is not limited by the powers of the United States government, local governments have powers that are much more circumscribed. Each unit of local government is essentially an agent of the state government, and its powers are derived either from a charter or from statutory enabling legislation.

The legal doctrine of state supremacy over local government was first formalized in 1868 by Judge John F. Dillon. Judge Dillon held that:²

Municipal corporations owe their origin to, and derive their powers and rights wholly from the legislature. It breathes into them the breath of life, without which they can not exist. As it creates, so may it destroy. If it may destroy, it may abridge and control. Unless there is some constitutional limitation, the legislature might, by a single act, if we can suppose it capable to so great a folly and so great a wrong, sweep from existence all municipal corporations of the state and the corporations could not prevent it.

"Dillon's Rule", as it came to be known has continued to be upheld, with some modification, in the state courts today.³ To counter this restrictive rule a movement developed to allow counties their own written charters. This movement is known as "home rule". Mr. Charles Adrian, a local government

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authority, explains home rule as the power granted to local units of government to frame, adopt, and amend charters for their local government and to exercise powers of local self-government subject to the constitution and general laws of the state.⁴ The home rule movement has succeeded with varying degrees in different states. In Hawaii, each county has its own home rule charter.

The important components of government are its structure, organization, functions, and powers. The responsibility of these components are assigned in Hawaii's Constitution either to the state or to the local government. While Hawaii has allowed each county its own charter, it has not given full responsibility for all of these components to the counties. Hawaii's 1968 Constitutional Convention provided that the counties' executive, legislative, and administrative structure and organization are superior to statutory provision.⁵ This provision is commonly referred to as the superior clause. The power to allocate and reallocate powers and functions was left with the legislature to perform by general law.

With the formation of the Hawaii State Association of Counties (HSAC) in 1959, the counties began an active program to pursue and support greater home rule. At the 1968 Constitutional Convention the HSAC lobbied successfully for the superior clause. The association also sought broad powers to plan, finance, and execute county programs.⁶ Their proposals to grant counties residual powers, powers not denied by state, charter, or constitution, were considered and denied by the standing committee on local government of the 1968 Constitutional Convention. The general consensus of the committee was that having the legislature confer powers upon the counties had worked well in the past, the legislature had been sympathetic and responsive to county problems, and there was no demonstrated need for the constitutional grant of residual powers to the counties.⁷ The committee also decided to retain the full taxing powers in the legislature based on reasons of efficiency, integrated statewide tax policy, simplicity, and uniformity of taxation.⁸

The HSAC⁹ and other local government administrators¹⁰ have indicated a desire to continue their pursuit of greater home rule in the 1978 Constitutional Convention. This includes a broader grant of the taxing power to the counties and control over personnel practices.

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Hawaii's strong central government has historically allowed counties to serve as traditional municipal governments responsible for local services to the community.¹¹ Their role as administrative appendages of the state government has always been minimal. After the Public Administration Service (PAS) of Chicago study in 1962, a number of these administrative responsibilities were absorbed by the state. Act 97 of the 1965 legislature returned administration of school construction and maintenance, hospitals, and district courts, to name a few functions, to the state. The legislature has continued in the last 10 years to distribute and absorb responsibilities where it has deemed it necessary. Legislation has included, among others, a state policy plan, state transportation council, and Oahu metropolitan planning organization (OMPO).¹² The ability of the legislature to delegate powers and functions has also made it possible for functional consolidations such as OMPO and the Hawaii community development authority established by Act 153 in 1976.

In a review of the Hawaii Constitution for the purpose of working towards an effective and efficient local government for Hawaii, the writings of 2 important commentators on local government at the national level should be noted. The National Association of Counties (NACO) and the Advisory Commission on Intergovernmental Relations (ACIR).

The official policy of the National Association of Counties as incorporated in "The American County Platform" is that counties require:¹³

- (1) Flexibility of form--the ability to devise their own internal organization structure either under charter or general law.
- (2) Flexibility of function--the means to determine the scope and extent of the governmental service each will render subject to the recognized need for some uniformity in the standard of service delivery.
- (3) Flexibility of finance--the ability to employ means of financing county government other than by the traditional and often inadequate property tax.

The Advisory Commission on Intergovernmental Relations suggested performance standard criteria is as follows:¹⁴

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- (1) Economic Efficiency: Functions should be assigned:
 - (A) To jurisdictions large enough to realize economies of scale and small enough not to incur diseconomies of scale;
 - (B) To jurisdictions willing to provide alternative service offerings to their citizens and to provide these public services within a price range and level of effectiveness acceptable to local citizenry; and
 - (C) To jurisdictions that adopt pricing policies for appropriate functions whenever possible.
- (2) Equity: Functions should be assigned:
 - (A) To jurisdictions large enough to encompass the cost and benefits of a function or willing to compensate other jurisdictions for the service costs imposed or benefits received by them; and
 - (B) To jurisdictions that have adequate fiscal capacity to finance their public service responsibilities and that are willing to implement measures that insure interpersonal and interjurisdictional equity in the performance of a function.
- (3) Political Accountability: Functions should be assigned:
 - (A) To jurisdictions controllable by, accessible to, and accountable to their residents in the performance of their public service responsibilities; and
 - (B) To jurisdictions that maximize the conditions and opportunities for active and productive citizen participation in the performance of a function.
- (4) Administrative Effectiveness: Functions should be assigned:
 - (A) To jurisdictions that are responsible for a wide variety of functions and so can balance competing functional interests;
 - (B) To jurisdictions that encompass a geographic area adequate for effective performance of a function;
 - (C) To jurisdictions that explicitly determine the goals and means of discharging public service responsibilities and that periodically reassess program goals in light of performance standards;

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- (D) To jurisdictions willing to pursue intergovernmental means of promoting interlocal functional cooperation and reducing interlocal functional conflict; and
- (E) To jurisdictions with adequate legal authority to perform a function and to rely on this authority in administering the function.

Local government in Hawaii is presently comprised of one metropolitan area, the City and County of Honolulu, and 3 nonmetropolitan counties: Kauai, Maui, and Hawaii. The fifth county is Kalawao, on the island of Molokai, which is the treatment center for Hansen's disease and administered by the state department of health. There are no other additional local governments in Hawaii.

Unlike the contiguous divisions of counties on the mainland, Hawaii's counties are separated by water. Hawaii also has a unique demographic profile. The largest county, Hawaii, comprises 63 per cent of the state's land¹⁵ and yet has just under 10 per cent of the state population.¹⁶ The county of Maui, which includes the islands of Maui, Molokai, Lanai, and Kahoolawe, has all but 10 per cent of its population on Maui,¹⁷ and 6 per cent of the state population.¹⁸ Kauai county, which includes the privately owned island of Niihau, is the third largest, but the least populous of the 4 counties with a resident population totaling about 4 per cent of the state's total population.¹⁹ Although the City and County of Honolulu is the smallest of the 4 counties in geographical size, excluding water area, four-fifths of the state population reside on Oahu.²⁰ The bulk of Hawaii's business and tourist industry is also on Oahu. One source referred to Honolulu as "the purest form of metropolitan government in the United States, with business and industrial centers, plantations, farms, and suburbs all falling under the same administration".²¹ Legally, the State of Hawaii consists of 8 major islands and 124 minor islands with a total land area of 6,425 square miles.²² These diverse counties and Hawaii's unusual geographical situation require a flexible form of local government to meet the needs of each county, and yet to serve the population equally.

Chapter 2

STRUCTURE AND ORGANIZATION

Two sections of Article VII of the Hawaii Constitution deal with the structure and organization of local government. Section 1 allows the creation of political subdivisions by the legislature. Section 2 concerns the structure and organization of each political subdivision's self-government. Unlike elsewhere in the United States, Hawaii's governmental structure is unique in its simplicity. There are only the state and county levels of government, and each county has organized and structured its own self-government charter for at least the last 10 years. In addition, there has also been structuring of intergovernmental coordination by the state legislature where it was necessary.

Political Subdivisions

Creation of Hawaii's political subdivisions dates back to the days of the Hawaiian monarchy when there was a governor for each island.¹ From this the U.S. Congress established 5 counties in 1905 pursuant to the Organic Act of 1900. This Act provided government for the Territory of Hawaii. Kalaupapa, the Hansen's Disease Center on Molokai, became a separate county exempt from the County of Maui. A few years later, in 1907, the legislature combined the City and County of Honolulu and established a full-time mayor for the municipality. The present county boundaries in the State of Hawaii are defined in section 61-1 of the Hawaii Revised Statutes (Hawaii, Maui, Kauai, and Kalawao) and section 149-1, Revised Laws of Hawaii, 1955 (Honolulu), and in the various county charters.

The legislated division of local government in Hawaii continues to be these 4 counties (not including Kalawao). No other divisions for local government exist. Nationally, the picture of local government is quite different. Two states, Connecticut and Rhode Island, have no organized county government at all. Alaska and Louisiana have chosen to term what would be their counties "parishes" and "boroughs", respectively.² Alaska did this so as not to be

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confused with or limited by traditional local governments which existed in the older states.³ Since colonial days, Virginia has kept separate the governing areas of the cities and counties. This is unlike the coterminous development of other city-county governments such as Baton Rouge, Denver, and Philadelphia.⁴ In 1805, New Orleans became the first consolidated city-county.⁵ There are now 23 consolidated city-counties, including Honolulu, in the United States.⁶ Some state constitutions have separate articles for municipal corporations and for county government.⁷ Other states set forth the physical assignment of county lines in their constitutions and provide a prescription for change, incorporation, annexation, or geographical consolidation.⁸ Hawaii has left this type of structural concern to the legislature.

Local Self-Government

Traditionally, county governing bodies have had little direct control over the structure of their government.⁹ Charters, which are sometimes referred to as "home rule" charters, are a recent development in local government. In the early 1960s, the Advisory Commission on Intergovernmental Relations recommended that the constitution of each state grant, in one form or another, authority to counties to determine their own form of county government.¹⁰ Prior to Hawaii's 1968 Constitutional Convention, only Honolulu had a charter. Although allowed charters, the other Hawaii counties continued their government by statute. In March of 1968, the Hawaii Supreme Court held that a charter, even if adopted under the Constitution as provided by Article VII, section 2, of the Hawaii Constitution, was no more than a statutory charter which was subject to continuing legislative control.¹¹

The 1968 Constitutional Convention added the following superior clause: "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." This gave county charters a higher status than statute within the prescribed areas, and conformed to the above ACIR recommendation.¹² The state can only affect

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county structure and/or organization when transferring a power or a function from the county to the state level or vice versa. Thus, a department of the county government already provided for in its charter could be eliminated by a transfer of its functions to the state level.¹³ The City and County of Honolulu's 1959 charter was revised in 1972. Charters for the other counties were established in 1969, with Maui county further revising its charter in 1976.

In 1970, Hawaii was one of only 7 states (California, Maryland, New York, Ohio, Oregon, and Washington) to permit all counties in the state to exercise home rule powers.¹⁴ As of November 1975, there were 68 county-type governments operating under a home rule charter in the United States.¹⁵ By 1976 many states had given counties the flexibility of choosing alternative means of organizing their governing boards.¹⁶ Legislation in Florida provided that the county charter may prescribe one of 3 optional forms of county government and that noncharter counties may adopt the county administrator form by ordinance. The South Carolina legislature, pursuant to a new constitutional article on local government, enacted a home rule law allowing counties the choice of 5 forms of government, several options in making the transition to home rule, and 3 forms of government for municipalities. Procedures for the adoption of home rule charters were also enacted in South Dakota. The New York legislature amended the state's village law to allow the adoption of the manager form of government by villages.¹⁷ In November, 1975, Texas voters vetoed a new constitution which would have granted substantially greater powers to local governments.¹⁸ These events during the past few years indicate that the states are moving to clarify their responsibilities with respect to their local governments.¹⁹

The most striking structural change made by charter counties related to the establishment of centralized executive authority.²⁰ In 1971, only 3 of the then 36 chartered counties in the United States continued to retain the traditional plural executive structure. Honolulu's charter provides for a strong mayor with broad supervisory powers. Although not responsible for as large a population or administrative staff, the other Hawaii counties also allow for a responsible and accountable mayor. The mayor-council form of government utilized in all of Hawaii's counties is popular throughout the United States.

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Recent structural and organizational changes in Hawaii's counties include the following: Honolulu's charter of 1972 added neighborhoods and neighborhood boards for the purpose of full citizen participation in government.²¹ Maui's charter of 1976 added a managing director to act as chief administrative assistant to the mayor since it had proven successful in the County of Hawaii and the City and County of Honolulu.²²

Structural Reform: Intergovernmental Coordination

There is increasing evidence that the main focus of structural reform may now be shifting from emphasis on cities and their structures, or even counties and their structures, to the interfunctional relationships of a variety of governmental units in a metropolitan area. The question facing the metropolis now is not how to restructure a particular city government, but rather how to structure governmental relationships in the metropolitan area so as to mobilize total community capacity to deliver most efficiently the governmental services needed.²³

Both state and county governments in the United States have demonstrated interest in strengthening and improving intergovernmental cooperation. This includes such intergovernmental activities as planning in Idaho and Washington, construction in Kansas, and transportation planning in Arizona, Hawaii, Idaho, and Washington.²⁴

Relevant to this new area of intergovernmental relations is the development during the 1970s of coordinating offices between state and local governments. Councils on intergovernmental relations were established in Georgia and Michigan to serve as forums for the discussion and coordinated action on mutual problems.²⁵ Alaska established in 1972 a department of community and regional affairs for the purpose of rendering maximum state assistance to government at the community and regional level.²⁶ Arkansas replaced its state planning department with a department of local services.²⁷

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Hawaii has been part of this shift in emphasis to intergovernmental reform. The legislature created 2 intergovernmental organizations: the Oahu metropolitan planning organization in 1975, and in 1976, the Hawaii community development authority. The temporary government organization commission reported to the ninth state legislative session on all state and county agencies' powers, functions, services, and responsibilities. Basing their considerations on uniformity, equity, and economy, they recommended few changes and some collaboration between the counties and the state through the state policy plan.²⁸

It appears the effort to have greater coordination, consolidation, and closer working relationships among the state, regional, and local governments will continue and intensify.²⁹

Chapter 3

FUNCTION

At the core of the American federal system lies an institutional fact that each level of government has certain responsibilities for the performance of public functions.¹ Local government functions have traditionally been divided into 2 areas: as administrative arms of the state and federal governments, and as service units for their areas. More recently, the function of local government, particularly that of counties, has been to coordinate, consolidate and/or share responsibilities with other units of government.

Although the units of local government in Hawaii are designated and known as counties and possess a form and structure generally analogous to the prevailing mainland patterns, they are not generally comparable to the traditional mainland county. Many of the functions which are traditionally performed by mainland counties as agents of the state are performed directly by the State of Hawaii. These include such functions as the administration of circuit and district courts, assessment of property for taxation, administration of public welfare provisions, and the supervision of public schools. Conversely, the counties in Hawaii perform most services which on the mainland are traditionally assigned to cities, towns, and villages. These include fire and police protection, refuse and other public works, and street lighting.² Recent Hawaii legislation has enhanced intergovernmental cooperation through establishing such programs as the Oahu Metropolitan Planning Organization in 1975, the State Policy Plan in 1975, and Coastal Zone Management in 1977.

In the early 1970s, the intergovernmental system entered a new phase, commonly called the New Federalism. The idea was to decentralize some governmental functions and centralize others. State and local governments would provide essentially local services to their local constituents and diversity would be encouraged to best provide those needs. However, in areas such as welfare, health care insurance, and social security, where the aim is to treat all citizens the same regardless of where they live, federal policy would dominate.³ The major trend has been to turn away from tinkering with structure to

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developing pragmatic functional programs which are able to bring about improvement in the delivery of government services.⁴ Primarily, this has meant functional reorganization in either of the 5 following ways:

- (1) Local government consolidation. This is a geographic consolidation.⁵ In other states, this has been accomplished between cities and counties, and counties and counties. The most prominent example of this was in 1957 in Florida, when Dade County consolidated with the City of Miami. California, Michigan, and Virginia have all recently provided procedures for consolidation between local government units.⁶
- (2) Joint service agreement. This is a formal agreement in which 2 or more governments participate in providing a particular service, with financing, servicing, and policy decisions shared by all participants.⁷ Joint powers legislation has been enacted in Kansas, Utah, and Wyoming.⁸
- (3) Functional consolidation. This occurs when 2 or more units of government agree that one level of government will perform a service. The City of Rochester and Monroe County, New York, pioneered in this area by consolidating 19 of their functions.⁹
- (4) Intergovernmental service contract. This is a formal means by which governments undertake mutual obligations to one another (usually voluntarily) to purchase a particular service.¹⁰ It is a simple business transaction between or among government units which enables one unit of government to contract with another for specific services.¹¹ Los Angeles County, California, established a contract service program in 1954, known as the Lakewood Plan, with one of its municipalities, Lakewood.
- (5) Functional transfer. This either centralizes or decentralizes a particular function by transferring it from one unit of government to another. There has been an accelerated trend in the last few years for traditional local functions to be transferred to the state government. A major transfer of

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functions occurred in Connecticut when in 1960 county governments were abolished and their responsibilities shifted to the state level.¹² Hawaii's Act 97 of 1965 transferred a number of functions from the counties to the state, including district courts, schools, and hospitals.

To assist state legislatures, the Advisory Commission on Intergovernmental Relations drafted a model constitutional amendment and a bill to facilitate the transfer of functional responsibility. The suggested constitutional amendment provides that:¹³

...by law, ordinance, or resolution of the governing bodies of each of the governments affected, any function or power of a county, municipality, or special district may be transferred to, or contracted to be performed by, another county, municipality, or special district as provided by law.

Montana's Constitution, Article XI, section 7, Intergovernmental Cooperation, states:

...unless prohibited by law a local government unit may cooperate, share or transfer its function, power or responsibilities with one or more local government units, school districts, State or Federal government.

In 1975, the Hawaii state legislature concerned itself with functional reorganization by requesting a temporary commission on organization of government (COG) to study and report on all state and county agencies' powers, functions, services, and responsibilities, consolidation of similar services, and elimination of duplications.¹⁴ The commission's report to the ninth state legislature included the following guidelines for allocating functions:¹⁵

- (1) Consider history, tradition, and current community values.
- (2) Eliminate duplication of functions between state and local governments unless justifiable reasons exist for its continuance.

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- (3) Where degree of responsiveness in services is of greater value than uniformity of service, allocate that function to local government.
- (4) Where uniformity of service is of greater value than degree of responsiveness, allocate that function to state government.
- (5) Group together related functions to the extent that effective service is promoted.
- (6) In allocating functions between state and local governments, take into account federal constraints.
- (7) Present allocation of financial resources shall not be a constraint on the realignment of functions, however, to the extent that functions are realigned, allocate adequate resources.
- (8) Give consideration to the concept that certain functions can be performed more effectively by private or quasi-public institutions.
- (9) Consider that certain functions fall in the category of joint participation by the state and local governments.

The above-mentioned criteria coincides with expressed concerns of county officials and the 1974 CORE Report to the governor. The CORE Report is a report by the governor's ad hoc commission on operations, revenues and expenditures. It assessed state government operations and expenditures on the basis of improving efficiency and effectiveness in government.¹⁶ Both Mayor Frank Fasi¹⁷ and Council Chairman Marilyn Bornhorst¹⁸ of the City and County of Honolulu have expressed concern with overlappings and duplications of services and functions, as is mentioned in the second criteria of the above COG Report.

State Mandate

From the viewpoint of many local government officials, one of the principal irritants in present-day state-local relations is the "state mandate".¹⁹ "State mandate" may be defined as a legal requirement--constitutional provision, statutory provision, or administrative regulation--that a local government must undertake a specified activity or provide a service meeting minimum state

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standards.²⁰ Functioning as an arm of the state, the principal objection to mandates raised by local officials is the failure of the state government to fully reimburse local governments for the additional costs attributable to the mandates. Although not specifically mentioned as such in either the CORE or the COG Report, it is touched upon by both. The CORE Report recommended studying existing state-county revenue relationships with the consideration of the functions assigned to each level of government²¹ and criteria number 7 in the above COG Report mentions this same concern. Mayor Malapit of Kauai county has written, "One of the distinct ways in which the state has hindered local government has been the imposition of functions and services without offsetting allotment of revenues."²²

The functions of the local government units in Hawaii have not been defined by the Constitution but instead the power to define these functions has been assigned to the legislature by section 2, of Article VII, in Hawaii's Constitution. In neither the CORE nor COG Report is there a recommendation for change of the Hawaii Constitution. The CORE Report recommended joint responsibility of the county and state in housing, environmental protection, and planning.²³ The COG Report also called for joint participation in housing, the State Plan, and Coastal Zone Management.²⁴ This has been accomplished through legislation.²⁵ Both reports recognize the need for some consolidation and close coordination and communication, but do not recommend altering the roles of state or local governments to any large degree.

Chapter 4

POWER

The states have plenary powers by virtue of their original sovereignty; they retain all the powers it is possible for government to have except insofar as these powers have either been delegated to the federal government or have been limited by the state constitution.¹ From the beginning, state constitutions have carried provisions relating to the establishment, powers, and control of local government due to an early court finding that local government is a creature of the state.² The legal basis of local governments described by the U.S. Supreme Court is that of a "political subdivision of the state, created as a convenient agency for the exercise of such of the governmental powers of the state as may be entrusted to it".³ Although local government units in many states are now allowed home rule charters, there has been very little movement by the states to constitutionally provide more responsibility and power to their local government units. A majority of the state constitutions delegate to the legislature or general assembly the ability to prescribe by law the powers and functions of their local government units. Additionally, most of these states, including Hawaii, have limited legislative control by providing that only general laws may be passed for this purpose.

Definition

Governmental power is the total capacity to govern which can be exercised by a given political community.⁴ Power is "the right, ability, or faculty of doing something",⁵ and is the key to defining local government's responsibilities and functions. Local government power is defined either in the state constitution, by charter, or by state law.

Origins of Power

There are 2 approaches to determining power which are based on direction. Moving downward from the state is the allocation of power method. Responsibilities and powers are assigned by the state to the local government units. The reverse of that is residual power, which provides that all power not given to other levels of government by constitution, charter, or law belongs to the local government. This has also been referred to as the "shared power" or "concurrent method". More specifically:

- (1) The allocated powers method. This approach to the division of powers is an effort to constitutionally designate certain functions as exclusive local government concerns. The power to carry out functions are stated in (A) specific listings such as the acquisition, care and management of streets and avenues; the acquisition, ownership and operation of transit facilities; the levy, collection and administration of local taxes authorized by the legislature, etc.; (B) general terms such as powers over "local affairs, property, and government"; and/or (C) a combination of general terms with a specific listing.⁶
- (2) The concurrent or shared powers method. This approach basically calls for constitutional language granting certain local governments all legislative powers except that specifically denied them by the constitution, law, or charter. The approach is based on the premise that powers should be shared by state and local governments, rather than allocated or parceled out between them.⁷ Under this method full legislative authority is granted to the local government subject to control by the state legislature through enactments which restrict local legislative action or which deny power to act in certain areas.⁸

The history of these 2 approaches to local government power should be reviewed for a better understanding of what is now recommended by a number of reform organizations and how it may apply to Hawaii.

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Home rule originated in the nineteenth century at a time when state legislators were predominantly rural, and urban citizens were opposed to state legislative interference in drafting municipal charters. It was urged that municipal affairs be settled at city hall rather than in state capitals.⁹ The first adoption of constitutional home rule was in 1875 with the Missouri Constitutional Convention.¹⁰ The ability to frame and adopt their own city charters was a win for "structural home rule" forces. The National Municipal League, formed in 1897, put into writing a municipal program which embodied the essential principles of greater freedom to cities, particularly in their form and structure.¹¹ The league produced a Municipal Corporations Act which later became their first Model City Charter. Through the years the League has produced numerous editions of a Model City Charter and also a Model State Constitution.

Following the first edition in 1921 of the League's Model State Constitution, in 1928 new sections were added to include county authorization to frame, adopt, and amend charters and city-county consolidations.¹²

Until the early 1950s the League promoted the allocation method of distributing power. The idea was to separate what is municipal or local from what is a matter of statewide concern.¹³ Constitutions would give selected local governments authority over the former and reserve the latter for the legislative control. Specific areas, in which the cities and counties were to be free to act without legislative authority, were listed in some cases.¹⁴ The attempt to make certain powers and functions off limits to state legislative control through constitutional provisions has resulted in an area of judicial control, with courts being called on to determine what are and what are not, local as opposed to statewide concerns. Local governments have not fared well in these court tests.¹⁵

In the early 1950s, as the League was preparing another edition of its "model", a new approach to local government was published by Jefferson B. Fordham, Dean of the University of Pennsylvania Law School, for the American Municipal Association (now the National League of Cities). The "Model Constitutional Provisions for Municipal Home Rule" proposed a "shared" power

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method of distributing power. The Association's model endeavored to avoid the "general versus local affairs issue by providing constitutional wording giving certain local government units all legislative power not specifically denied them by the constitution or by statute. This type of home rule status had originated in Texas when John P. Keith had presented an analysis of recent judicial interpretations of home rule status of Texas cities.¹⁶

With these 2 alternatives for their "Model State Constitution", the National Municipal League most recently presented both for states to consider. Priority was given to a variation of the Fordham formulation and the traditional doctrine was moved to an alternative position. The new power section is as follows:¹⁷

A county or city may exercise any legislative power or perform any function which is not denied to it by its charter, is not denied to counties or cities generally, or to counties or cities of its class, and is within such limitations as the legislature may establish by general law. This grant of home rule powers shall not include the power to enact private or civil law governing civil relationships except as incident to an exercise of an independent county or city power, nor shall it include power to define and provide for the punishment of a felony.

The alternative power provision includes only the general grant of power as follows:¹⁸

...each city is hereby granted full power and authority to pass laws and ordinances relating to its local affairs, property and government; and no enumeration of powers in this constitution shall be deemed to limit or restrict the general grant of authority hereby conferred; but this grant of authority shall not be deemed to limit or restrict the power of the legislature to enact laws of statewide concern uniformly applicable to every city.

In 1962, the Advisory Commission on Intergovernmental Relations (ACIR), the only agency in which all governmental levels are represented, came out with their proposal. Simply it states:¹⁹

Municipalities and counties shall have all powers and functions not denied or limited by this constitution or by State law. This section shall be liberally construed in favor of municipalities and counties.

The ACIR has described it as providing for the "residual powers of local government".²⁰ Although the League prefers to use the term "shared powers" the method is the same for the ACIR proposal, the National Municipal League model, and Fordham's American Municipal Association proposal. All 3 use the term "not denied" in the limiting provision and recognize that the state through its constitution and statutes may deny powers to local governments.²¹ The National Association of Counties' American County Platform recommends that the states, by popular referendum, in their constitutions grant to selected units of local government all functions and financing powers not expressly reserved, pre-empted, or restricted by the legislature.²²

Concurrent with support for the more recent residual power method approach has been a continual support for the allocated method by Dr. Arthur W. Bromage of the University of Michigan. Dr. Bromage's concern is that the Fordham plan of home rule power makes it subject to any state legislative limitation by general law.²³ Dr. Bromage has been more willing to trust the fate of local self-government to the courts, than leave it to the legislature.²⁴

The problem of judicial interpretation concerning whether a power or function belongs at the state or local level is only part of the argument against the use of the allocation method.²⁵ Many question whether functions of government can any longer be assigned to one level of government because all levels--local, state, and federal--participate in them. Governmental power cannot be allocated, it is argued, but must be shared.²⁶

With the residual powers method the hazards of judicial interpretation are avoided because the courts, rather than weigh statewide or local concern, need only decide that a power has been specifically denied by the state.²⁷ A prominent supporter of this residual powers method, Frank P. Grad, acknowledges that the method does not provide the protection for local government authority that supposedly is provided through the allocated powers method. He supports the concept though, on the basis that it allows municipalities to take the initiative in legislative action with the state legislature less likely to act negatively, merely to defeat the city or county's power.²⁸

Present State Practices

The concept of giving more authority to local governments through expressed constitutional language, the allocated power method, has been adopted in most states. Many states have given constitutional authority for at least some of their local government units to write their own charters.²⁹ Other states do not grant home rule powers to local governments directly, but rather authorize or instruct the legislature to grant home rule powers.³⁰

The California Constitution, Article XI, sections 8 and 8-1/2 provides that certain cities and towns may "make and enforce all laws and regulations in respect to municipal affairs", then specifies local authority over a variety of local functions. Colorado goes quite far in attempting to carve out a constitutional area of local autonomy. Article XXX, section 6, broadly states what the local government may do and then includes specific areas.³¹ More than half the states have come up with systems of home rule in their constitutions.³²

The most advanced form, as far as flexible allocated power system is concerned is in Illinois where the 1970 Constitution provides procedures for claiming home rule powers, state preemption and exclusive exercise of power, concurrent exercise by state and local governments, and the resolution of conflicts in exercise of functions by counties and municipalities within them.³³

The number of residual power method constitutions now in effect is difficult to determine. Various sources cite different numbers, depending on their understanding of the residual or shared power method. Texas is considered to have adopted this concept by judicial interpretation and 4 other states (Alaska, Massachusetts, Pennsylvania, and South Dakota) have adopted residual or shared powers language in their constitutions.³⁴ Alaska quite clearly states in Article X, section 11, "A home rule borough or city may exercise all legislative powers not prohibited by law or by charter." Montana has been recognized to have the nation's leading constitution in structural flexibility for all counties and municipalities. Its constitution also provides for self-governing powers, "not prohibited by this constitution, law or charter".³⁵ Voters in Arkansas approved a new constitutional amendment extending residual home rule powers to counties effective January 1, 1977.³⁶

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There has been a recent trend to depart from the old strict construction principle of constitutional provisions by specifying "liberal" construction of municipal powers.³⁷ Probably because of growing dissatisfaction with court rulings confining local self-government powers, states increasingly are inserting into their constitutions language calling for liberal construction of local government articles. Illinois, for example, states in Article VII, section 6(m): "Powers and functions of home rule shall be construed liberally." Similar language can be found in Alaska, Colorado, Iowa, Kansas, Michigan, New Jersey, New Mexico, New York, South Carolina, South Dakota, and Wyoming Constitutions.

Hawaii

Hawaii's Constitution approaches local government power by the allocated method. The "superior clause" mentioned in chapter 2 constitutionally allocates to the counties the power to structure and organize their own charters for self-government. The 1968 Constitutional Convention committee on local government provided for this addition for the purpose of protecting certain charter provisions against amendment or repeal by the legislature.³⁸ For example, prescribing requirements for election eligibility to county offices does not fall within the constitutional authority of the legislature but is more closely aligned to the "superior clause" of the Constitution delegating structural and organizational self-government.³⁹ Other functions and powers remain with the legislature to allocate and reallocate as is appropriate. Hence, the state legislature dictates all other county responsibilities, except those of structure and organization for local government.

Of the 2 approaches, the counties have indicated a desire for the residual power method. The Hawaii state association of counties has indicated a preference for residual power or at least a clearer allocation by constitution of their powers.⁴⁰ Mayor Malapit, of Kauai county, has written:⁴¹

I would like to see an overall constitutional change that would reserve all powers not specifically granted to the state to remain in the counties.

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Mr. Paul Mancini of the Maui county mayor's office, recommended to the commission on organization of government:⁴²

...a specific statutory provision adopting the concept and principle of home rule with specific broad powers for the counties. Such an approach coupled with a statutory instruction to the courts to broadly and liberally construe the powers of the counties should assure that the counties will have full authority to carry out those functions they are assigned and to develop programs to meet their localized needs.

Recently, an issue of local or state supremacy has been taken to the Hawaii courts for a decision. In August 1977, the State Supreme Court took under advisement an appeal of a circuit court judge's decision to uphold the validity of the revised 1976 Maui Charter, provisions of which it is argued, improperly superseded state laws.⁴³ The Hawaii government employees association and others argue there are particular amendments in the Maui Charter in conflict with the laws of Hawaii and in violation of the Hawaii Constitution. They are asking that particular amendments to the Maui Charter be declared invalid.⁴⁴ Specifically, Article 8 of the Maui Charter abolishes the office of county attorney and creates the departments of corporation counsel and public prosecutor. The staff, transferred to the new departments, who were under civil service are now exempt from civil service. It is argued this is in conflict with the Hawaii Revised Statutes, section 76-88, which provides for the inclusion of all county employees within the civil service system except those employees specifically exempt by section 76-77, Hawaii Revised Statutes. Other aspects in the conflict are: a shift of power from the Maui civil service commission to the mayor to appoint and remove the director of personnel services; adjustment of functions and powers between the department of public works and the department of water supply; substitution of the county planning director instead of the district engineer of the state department of transportation on the board of water supply; procedural alteration of the power of the police commissioner to remove the chief of police; and provisions for the suspension or removal from office set by the code of ethics in Article 10 and in conflict with chapters 76 and 89, Hawaii Revised Statutes. As of this writing, the Supreme Court of Hawaii has not ruled in the case.

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Personnel and procedure issues were considered in the 1968 Constitutional Convention. At that time the committee on local government felt that those powers should be left with the legislature since the legislature should not be deprived of the power to enact and maintain laws such as the Civil Service Law or the Administrative Procedures Act.⁴⁵ Unlike a constitutional provision of these powers, any delegation thereof by the legislature on such matters as personnel would not be irrevocable. The counties have sought for the inclusion of these 2 particular areas as part of their campaign for more home rule. They advocate a constitutional provision that would give them the option of adopting independent pay plans.⁴⁶ Honolulu City Council Chairman Marilyn Bornhorst would also like to see further consideration of the personnel issue stating, "Honolulu and neighbor island public job classes are described and priced alike, however the environments in which persons holding similar jobs within the various counties are completely different. Perhaps this difference should be reflected in salary."⁴⁷

In conflict with Chairman Bornhorst's comment is the long established concept of "equal pay for equal work".⁴⁸ The basic idea is that fire fighters doing the same job in one county should be paid equally as one in another. A further discussion of this concept can be found in Hawaii Constitutional Convention Studies 1978, Article XIV: General and Miscellaneous Provisions.

Personnel is a complex issue. The civil service system also includes collective bargaining and the merit system. Collective bargaining, performed throughout the state, provides uniformity and each jurisdiction, as provided by law, participates.⁴⁹ The merit system establishes position classification and should provide job incentive.

If it were not explicitly denied in the 1968 Constitutional Convention, there could be a case for including personnel and procedure under organization and structure of county self-government. In a court case in Louisiana, La Fleur v. City of Baton Rouge, dealing with a provision similar to Hawaii's "superior clause", it was held that personnel fell within the realm of structure and organization and did not relate to the power and function of government. Compensation was considered a concern of the internal organization and not part

of the legal capacity to institute a department. The Louisiana constitutional provision did, however, include personnel in the superior clause in question.⁵⁰

General and Special Law

Not only is there a necessity to clarify state/county responsibilities from time to time but there are other legal considerations that can arise. Hawaii, like well over three-quarters of the states, provides that the legislature enact only "general" laws for its political subdivisions. The purpose for this is to protect local governments from abusive legislative action through "special", or "local" laws.

A "general" law is defined as follows:⁵¹

A statute is ordinarily regarded as a general law, if it has a uniform operation. Within the meaning of this rule, a statute has a uniform operation, if it operates equally or alike upon all persons, entities, or subjects within the relations, conditions, and circumstances prescribed by the law, or affected by the conditions to be remedied, or, in general, where the statute operates equally or alike upon all persons, entities, or subjects under the same circumstances. Mere classification does not preclude a statute from being a general law. A law is a general one where it relates to persons, entities, or things as a class, or operates equally or alike upon all of a class, omitting no person, entity, or thing belonging to the class.

Conversely, a "special" law is:⁵²

...one which relates to particular persons or things or to particular persons or things of a class...instead of all the class.

So also, a "local" law is one which:⁵³

...operates over a particular locality instead of over the whole territory of the state or any properly constituted class or locality therein.

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During the nineteenth century, the abuse of legislative power as to particular municipal corporations, led to demands that constitutions require general law legislation. State constitutions in Ohio and Indiana (1851) were the first to include prohibitions against special legislation applicable to municipal corporations.⁵⁴ Through the years the courts have clarified the general law provisions. Under the Organic Act of 1776, the legislature of North Carolina had virtually unlimited constitutional power to enact local and private statutes. As an inevitable consequence, the law frequently differed in one locality from another. To minimize the resultant confusion, the Constitution was amended in 1916 to prohibit the enactment of local or special legislation. Later in 1945, the legislature, by statute, authorized 2 counties to create a joint public health agency. The Court ruled that since the statute operated "only in a limited territory of specified locality" of the state, it violated the constitutional prohibition against local acts.⁵⁵

Hawaii's department of the attorney general dealt with a number of inquiries as to clarification in this regard. Primarily this centers around the fact that prior to statehood there were enacted special laws relating to specific counties. These laws remain valid, and have been superseded, but no new special or local laws are constitutionally permitted. It is also difficult to repeal these laws since to do so requires special laws.

In 1961, the attorney general's office responded to an inquiry concerning what is a general law in regards to Article VII, section 2, of Hawaii's Constitution by answering the question: Did the legislature have the power to enact a law creating a board of water supply only for the County of Maui. Using the above mentioned definition, the opinion stated, "...construing the intent of the framers of our Constitution with the foregoing definitions, a 'general law' is one that operates equally without discrimination as to particular localities, upon all of the people or certain things within the territorial jurisdiction of the State of Hawaii, or operates equally and affects particular persons or things of a class based upon a reasonable and proper classification."⁵⁶ Therefore, it was concluded that the legislature could not create a board of water supply for the County of Maui, unless it did so by general law, creating the same for all counties.

The reverse situation was presented when the legislature wanted to repeal Act 296 of the Session Laws of Hawaii 1957, amending chapter 147, Revised Laws of Hawaii 1955, which provided for a specific number of fire stations for the county of Kauai. Although this Act applied only to Kauai, it was a law enacted prior to statehood and therefore retained its validity and effect notwithstanding the general laws provision of Article VII, section 1, of the Constitution.⁵⁷ The attorney general's opinion 61-36, had previously provided legal references to the fact that to blot out at once all special legislation in the state when a new constitution is established would throw the business of the state into chaos.⁵⁸ Hence, the law regarding Kauai's fire stations had not been repealed and could not now be repealed by special law.

This dilemma continues. Laws that were special, or local, before the Constitution was established continued to be amended,⁵⁹ although questionable and apparently may not be repealed. In order to repeal, it must be done in such a manner as to be superseded by general law.⁶⁰ A solution would be to provide that a special law may be repealed when superseded by general law, or as Pennsylvania's Constitution, Article III, section 32, states: "...but laws repealing local or special acts may be passed."

Classification

The general law system, while necessary to prevent special acts by the legislature, has proven unsatisfactory when applied to many cities and counties of widely varying populations. Therefore, under general laws a doctrine of classification by population arose.⁶¹ This is not to say legislation by classification is limited to population, but that reasonable classifications of local government units have been conceded by state courts as a necessary constitutional means of legislation. The more diverse the units of local government, the greater the need for classification. For example, classification is almost a necessity in a state with one city of more than 100,000 people and no other town of more than 10,000 people.⁶²

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Legally, legislation limited to a specific classification must walk a fine line. The classification adopted, or used, must bear a reasonable and valid relation to the objects and purpose of the legislation. It must be based upon a rational difference in the necessities or conditions found in the groups subjected to different laws. In order to be valid, a classification (such as population) must be open to let in localities subsequently falling within the class, and also to let out localities should they no longer meet the description.⁶³

No specific constitutional authorization to classify is necessary as many states have used classification for years without express constitutional authorization to do so.⁶⁴ To avoid misuse of classification a number of states constitutionally provide for limited types of classifications allowed.⁶⁵ The Model State Constitution, of the National Municipal League, suggests providing:⁶⁶

...the legislature shall provide for such classification of civil divisions as may be necessary, on the basis of population or any other reasonable basis related to the purpose of the classification.

Legislation by classification has applied to Hawaii. With four-fifths of Hawaii's population on the island of Oahu, there are diverse needs in legislation. Response within Hawaii's local government officials indicates an awareness of county diversification and a plea for county participation in this type of legislation. Mr. Takashi Domingo, chairman of the planning committee and council member of the County of Hawaii writes:⁶⁷

Classification of counties by population could be interpreted as special legislation, however, it is necessary because of the inequities in the population and economic distribution within the four counties. We concur that prior to any effective legislation that involves population classification, it should be subject to county/counties approval.

Chairman Bornhorst of the City and County Council of Honolulu stated:⁶⁸

...that state laws written to apply to political subdivisions with populations over 100,000 are specifically directed to the City and County of Honolulu and that state laws applying to political subdivisions with populations under 100,000 are meant for the neighbor island counties.... I personally feel that if such special

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or local laws continue to be enacted, then at least the county or counties affected by such legislation should be given the opportunity to approve or disapprove of such action. This would still permit the passage of mutually desired legislation while respecting the rights of the counties to local self-government and self-determination.

Mayor Malapit of Kauai responded:⁶⁹

Since Kauai's population is roughly 34,000 in contrast to over 700,000 for the City and County of Honolulu, I do feel that there is justification for the classification. I do not feel that there has been any discrimination effected by the classification on population basis.

The Hawaii State Association of Counties, both in 1968 and 1976, has stated:⁷⁰

While this sometimes has meritorious application, it does amount to special legislation. An alternative solution is to provide that the legislature may enact general legislation on municipal matters, but that such legislation would not become effective in a county unless and until that county's legislative body adopts it by ordinance.

In a 1965 opinion from the attorney general's office, the conclusion was that:⁷¹

If the Legislature finds with reasonable grounds therefor, that there are substantial and rational differences in the situation or condition existing in the different counties which bear a direct and reasonable relation to the objects and purposes of particular legislation, and accordingly by a proper classification (be it population or otherwise but not by specific reference to any particular political subdivision) makes such legislation applicable only to the City and County of Honolulu or to the neighbor island counties, we are of the opinion that such legislation would not be violative of the general law provision in the Constitution.

Constitutional provisions requiring local approval of legislation affecting only certain areas can be found in a number of state constitutions. Florida and Michigan allow for this in regards to the transfer of power or functions.⁷² Minnesota's Constitution, Article XI, section 2, special law, states:

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...a law shall become effective only after its approval by the affected unit expressed through the voters or the governing body and by such a majority as the legislature may direct.

At the beginning of Article IX, the New York Constitution provides a bill of rights for local government which includes local approval for function transfers and the power to adopt local laws.

Each state's approach to power must be considered in the context of that state. All the aspects of power discussed in this chapter will vary in their arrangement and need with each state.

Chapter 5

TAXATION AND FINANCE

The constitutional issue of taxation and finance in local government follows that of the previous chapter's discussion on power. Local governments do not possess any inherent powers to tax. The power to tax is an attribute of the sovereignty of the state. Consequently, local government taxing powers must be acquired by constitutional provision or delegated by legislative statute.¹

There are 3 possible approaches to constitutional grants of taxing power. First, the constitution may provide limits of what can be taxed and the amount set. Second, the constitution could leave the entire question of local government tax provisions to the legislature. Third, the constitution could directly grant taxing powers to local government units.²

Many state constitutional provisions, including Hawaii's, specifically reserve to the state legislature the power to authorize the particular forms of taxation and the extent of their use by local governments.³ Although some of the more recent constitutions have provided for greater home rule, more often, local taxing powers have specifically been retained by legislative control.⁴ Massachusetts, which switched to the concurrent/shared powers method in 1966, specifically withheld broad taxation power from local government.⁵ The revised Florida Constitution also retains substantial legislative control over local taxing powers.⁶

Some taxing authority has been allowed in a number of states.⁷ The Alaska Constitution provides for home rule charter units to levy any tax not prohibited by law or charter.⁸ Illinois, with prescribed veto power given the legislature, allows its home rule units the power to tax.⁹ The Michigan Constitution grants cities, villages, and charter counties the power to levy nonproperty taxes, subject to restrictions stated in the constitution or statutory law.¹⁰

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Legislatively, in recent years some states have provided greater taxing power to their local government units. Charter counties in Florida may now levy a 1 per cent sales tax, if approved by county residents, to be used for a fixed guideway rapid transit system.¹¹ Kansas and Wyoming have also recently provided for greater flexibility in raising sales taxes.¹²

A principal argument advanced in favor of financial home rule is based upon the proposition that the unit responsible for a function should also be responsible for its financing. Opponents stress the dangers associated with introducing rigid constitutional provisions relating to local government finance, in an age when swift and decisive action is essential if the needs of the people are to be met.¹³

Local government authorities are not only concerned with having the power to collect enough revenue for the services they provide, and wish to provide, but that additional costs required for duties assigned to them by their state and the federal government also must be assured. As mentioned in chapter 3, state-mandated duties often require additional funds. The Constitutions of Alaska, Louisiana, and Pennsylvania restrict the power of the state legislature to mandate costs upon local governments.¹⁴ The Alaska Constitution, for example, stipulates that, "...local acts necessitating appropriations by a political subdivision may not become effective unless approved by a majority of the qualified voters voting thereon in the subdivision affected".¹⁵

To leave the entire matter of local taxation with the legislature allows for a flexible taxation structure. The National Municipal League (NML) supports this approach. In commenting on the lack of inclusion of either a state or local taxation section in its Model State Constitution, the NML stated:¹⁶

Ideally, some authorities believe, a state constitution should be silent on matters of taxation and finance, thus giving the legislature and the governor complete freedom to develop fiscal policies to meet current and emerging requirements. Even if such a situation is not likely to materialize immediately, the Model should not mirror the complex and lengthy fiscal articles found in many state constitutions and which obviously are barriers to responsible government.

Converse to this, the Public Administration Service, in a report prepared for the Alaska Constitutional Convention, supported local fiscal authority stating:¹⁷

It may well be pointed out that the authority to tax one's self is seldom a dangerous authority. It is likely that the legislature will have just as effective control and fewer troublesome local taxation problems to face if it allows local units to tax all that is not prohibited by law rather than restricting them to only those taxes specifically authorized by law.

The Advisory Commission on Intergovernmental Relations (ACIR) recommends that when equipped with proper safeguards, local income and sales taxes should be viewed as appropriate local revenue sources and wide latitude should be given to local officials in selecting revenue instruments.¹⁸

Hawaii

The Hawaii Constitution clearly provides for legislative control over taxation and finance. The committee on local government of the 1968 Constitutional Convention deliberated changes to the local government section on taxation and finance and recommended retention of the section as it presently read. They agreed with the recommendation of the committee on taxation and finance that for purposes of "efficiency, integrated statewide tax policy, simplicity and uniformity of taxation", the taxing power should remain with the legislature.¹⁹

Although not without recommended legislative changes, Hawaii's tax system has received overall praise from a number of sources. The U.S. Advisory Commission on Intergovernmental Relations devised a test to measure the quality of state-local revenue systems and Hawaii placed highest in the nation with 86.1 points out of a possible 100.²⁰

The Tax Foundation of Hawaii concluded in one of its reports that:²¹

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The tax system of Hawaii is of high quality and extremely productive. It has provided ample revenues to an ever expanding governmental sector. It is progressive in nature and is properly balanced. An overhaul of the system does not seem warranted.

The CORE Report, which in 1974 had recommended no tax increase be made,²² recommended:²³

The existing State/County revenue relationship should be studied with consideration of the functions assigned to each level of government. Such a study should be undertaken by the Reorganization Commission whose creation is recommended by this Commission.

Consequently, the commission on organization of government (COG) reported in 1977:²⁴

Early in their deliberations, members of COG decided that fiscal resources of the Counties would be evaluated only after functional transfers were determined. However, only one transfer recommendation -placing responsibility for all road maintenance with the Counties - carried with it any significant fiscal implications.

COG also stated:²⁵

Hawaii's tax system is comprehensive and productive as compared with other states. Economists and tax specialists view it as efficient and equitable.

Hawaii's county officials, on the other hand, have stated a preference for greater direct control of their revenue collection and a concern for state-mandated functions. Council member Takashi Domingo, County of Hawaii, Chairman of the Planning Committee has written:

Being as the local officials are more readily accessible, the local citizenry frequently submit their concerns to the County officials thus they are more apprised of the concerns and should be accorded the proper authority and resources to handle these concerns. It is too often that the local officials are restrained by (1) The limitation of their function and power and (2) The limitation of financial resources.

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Mr. Domingo further states:²⁶

...in any consolidation the matter of proper funding should be thoroughly analyzed, keeping in mind that the counties are constrained in their taxing abilities.

City and County of Honolulu Council Chairman Marilyn Bornhorst wrote:²⁷

In these and other areas of local governmental services, we are constantly asked to do today what we can't possibly do until tomorrow or the next day partly because of inadequate financial resources.... With the proper local planning and policymaking tools backed up with an adequate local financial base protected from the whims of officials at higher levels of government, many more of these expectations will be able to be met in an orderly and timely fashion.

Mayor Malapit of the County of Kauai noted:²⁸

In view of the limited resources available to the counties, it would appear equitable that whenever a function or service is imposed upon the county, some method of financing the added functions be provided.

The Hawaii State Association of Counties in an original memo and an update 10 years later stated:²⁹

Legislative enactments sometimes impose new financial burdens on localities or cause erosions to the counties' revenue base. Employee pay increases and real property tax exemptions are examples of this. It is possible for the constitution to provide that the state reimburse counties for increased costs imposed by such burdens.

An Overview of Hawaii's Local Government Revenue System

Hawaii's county government revenue system may be viewed in 2 parts. First, there are tax revenues and secondly, and just as significantly, there are the nontax revenues. Of the tax revenues, the counties rely heavily on the real property tax, the rates of which are set by the county councils without limitation. The other 3 types of taxes are: the county fuel tax and motor vehicle weight tax, also levied without limitation, and the public utility

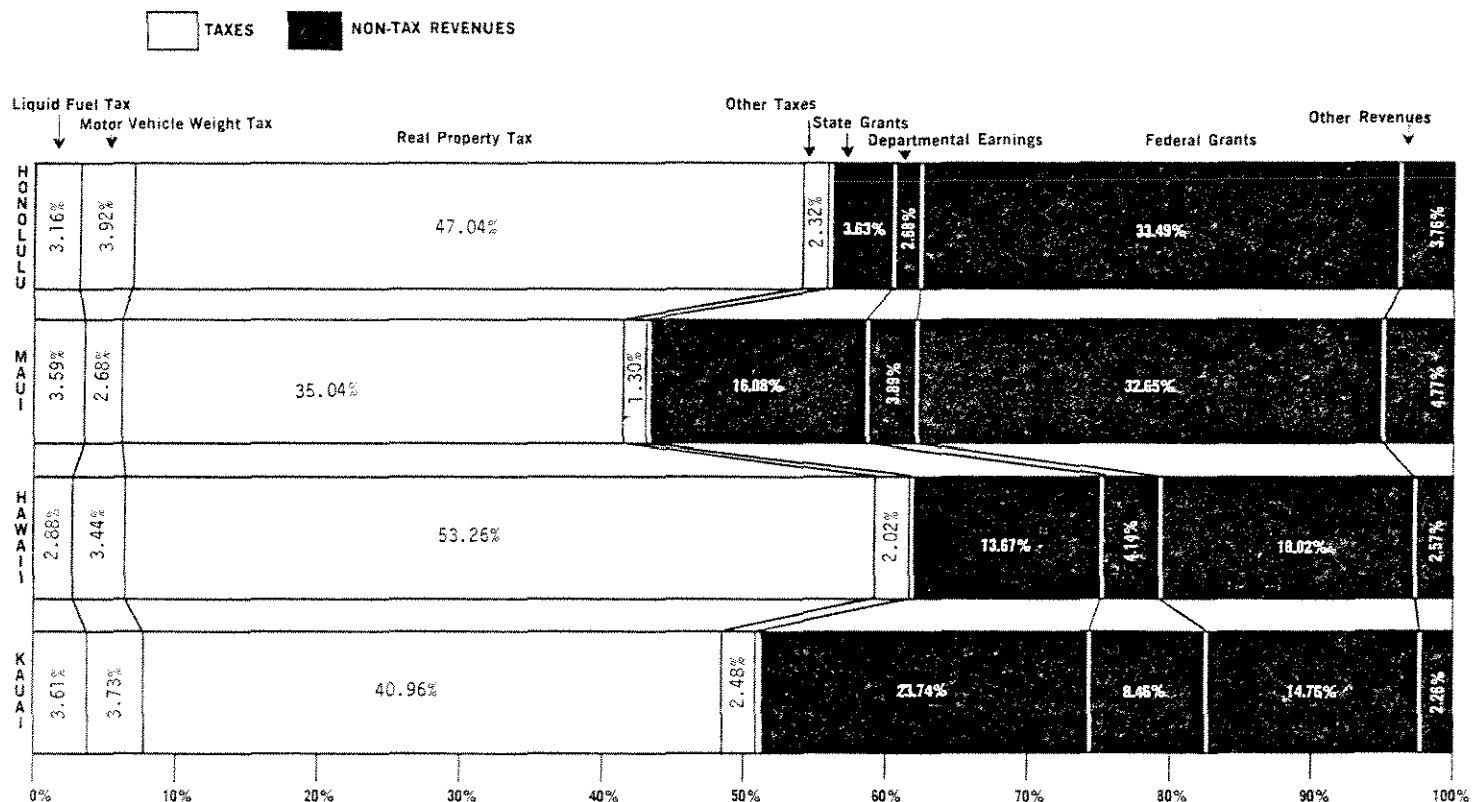
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franchise tax, administered and collected by the counties, but imposed by the state.³⁰ The nontax sources of revenue are: the counties' fees and charges, the state's grants-in-aid, and the federal moneys such as the general revenue sharing.

The Tax Foundation of Hawaii provides a visual breakdown of the 4 county government revenue sources.

SOURCES OF COUNTY GOVERNMENT REVENUE

Percentage Distribution--By Counties
For Fiscal Year 1976



Source: Tax Foundation of Hawaii, *Government in Hawaii: A Handbook of Financial Statistics* (24th ed.; Honolulu: 1977), p. 29.

Taxes

Real Property. Hawaii is the only state with a completely centralized real property tax administration. Its centralized system has received nationwide attention, and recently Montana and Maryland also centralized their real property assessment function at the state level.³¹

The real property tax is exclusively for county government use and represents a considerable percentage of each county's revenue. It comprised 47 per cent of Honolulu's \$249 million, 35 per cent of Maui's \$34 million, 53 per cent of Hawaii's \$35 million, and 41 per cent of Kauai's \$15 million in total county revenue for 1976.³² The outstanding feature of the county revenue picture during recent years has been the very large increases in property tax receipts. The percentage increases among the neighbor island counties have been striking, and property tax revenues have become the major source of financing for them as they have been in the City and County of Honolulu.³³ This has been due primarily to the spiraling values of property which have made it unnecessary to increase property tax rates.³⁴

The state establishes whatever authority counties may have to exercise their own revenue procurement. Recent legislation has required greater responsibility of the counties for their real property tax. Under the Hawaii Revised Statutes, chapters 246 and 248, the state is responsible for the administration, assessment, and collection of the real property tax, while the counties are responsible for setting the rate. In 1976, the state legislature by Act 229 amended this law to place more responsibility on the counties. Under this Act, known as the "Florida Plan", the state director of taxation will at the time of certifying the real property tax base of each county for the coming year, also certify the tax rate for each category of real property such that there is no increase or decrease in the revenue due each county over the previous year. This rate will stand unless it is increased (or decreased) by the county council. The effect of this is to preclude the counties from receiving windfall increased revenues from the inflationary assessed property values without taking positive action concerning the real property tax rates.³⁵

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The repeal of the "Pittsburgh Plan", by Act 139 of the 1977 legislative session, further streamlined the real property tax structure. The Pittsburgh Plan had mandated higher rates on land than on improvements for purposes of utilizing land at its highest and best use. The result had been to penalize those who were trying to preserve and conserve the land, while those maximizing the use of the land had been deterred from allowing for open space, walkways and such, as evidenced in Waikiki.³⁶ Act 139 repealed the 7 general classes of land divided into 4 categories and instead provides for 6 general classes. The method of setting real property tax rates for each separate category, separately for buildings and land, was repealed and instead the total revenue to be raised from real property in a county is now to be divided by the aggregate value of the taxable real property in the county. The passage of Act 229 of 1976 and Act 139 of 1977 were encouraged by the Tax Foundation of Hawaii.³⁷ The CORE Report recommended the repeal of the Pittsburgh Plan³⁸ and COG endorsed the enactment of the Florida Plan.³⁹

Each year all revenues derived from the real property tax, less the cost incurred by the state in administering the tax during the previous year are remitted by the state to the counties for their use. The administrative costs are divided among the counties in proportion to the assessed valuation of all taxable real property in each county.⁴⁰

Other Taxes. One of the few rate increases of the last 10 years in the Hawaii tax system has been in the fuel tax which is an "earmarked" tax assigned to state or county highways,⁴¹ depending on whether it is the state or county fuel tax which is collected. The state administers and collects both the state and county fuel tax, while the counties set the county rate. The only other major tax source for the county is the motor vehicle weight tax which is also earmarked for county highway use and is administered and collected by the counties who also set the rate. The COG Report recommended that all fuel tax responsibilities, except for aviation fuel, be given to the counties and the motor vehicular tax be shifted to the state for the highway fund.⁴²

Considering nonproperty taxes as a percentage of total local government taxes, it was found in 1971-1972 that Hawaii counties were in the minority that

depend on nonproperty taxes for less than 5 per cent of their total local taxes.⁴³

Nontax Sources

Fees and Charges. In many situations, a fee is charged in conjunction with the issuance of a license or permit. For example, food vendors are issued licenses; and permits are required for parades, circuses, building construction, and liquor sales. Moneys collected generally are related to the level of the cost of the administration of the particular government activity and do not generate revenue substantially greater than the cost associated with their administration. The annual income of several dollars per capita can be derived from these fees and charges in most general purpose local governments.⁴⁴

The sum of fees and charges collected in 1976 for liquor licenses, parking meter fees, fines, forfeits, and departmental earnings which includes rentals, interest and other earnings were: \$13,816,563 for the City and County of Honolulu, \$2,086,798 for the County of Maui, \$2,418,975 for the County of Hawaii, and \$1,540,179 for the County of Kauai.⁴⁵

State Grants. Unlike tax revenues which directly relate to the individual counties, grants-in-aid and other state grants, such as the capital improvement project funds (CIP) are simply moneys from the state to the counties based on need and may be administered under a fixed formula. The most recent grants-in-aid system from the state to the counties was established in 1965 under Act 155, an omnibus tax reform measure. This Act, section 248-6 of the Hawaii Revised Statutes, reduced previous county subsidies and was in conjunction with Act 97 of that same year, which transferred a number of county functions to the state.⁴⁶ Although amended in 1972 to administer the grants-in-aid by a formula based on civilian population and taxable real property, it was necessary to amend it again the next year. Act 114 of 1973 provided for state assistance at least equal to the cash value of state assistance distributed to the counties in the fiscal year which began on July 1, 1971. The grants-in-aid provisions of the bill were developed with consideration of its specific impacts on the state's

entitlement to federal revenue sharing funds under the Revenue Sharing Act.⁴⁷ Retention of the 1972 formula would have progressively reduced state assistance to the neighbor island counties,⁴⁸ and would have limited the state's qualifications for the federal revenue moneys under the Federal Revenue Sharing Act.

The increase in property tax revenues plus federal revenue sharing has decreased the relative importance to the counties of state grants from excise tax sharing.⁴⁹ Hawaii's pattern for grants to the counties, however, is not without criticism or recommended changes.⁵⁰ Grants are used to balance inequalities of ability to finance local needs and match state/county interest of particular projects.⁵¹ The COG Report recommended a dual approach to meet inequities of need and resource, specifically as between the City and County of Honolulu and the neighbor island counties. A percentage of the general excise tax revenue would be distributed to the counties on the basis of their population distribution and a grants-in-aid fund would be available for a more discretionary distribution.⁵²

Federal Moneys. The State and Local Assistance Act of 1972 (P.L. 92-512), generally known as the Federal (or General) Revenue Sharing Act, appropriated \$30.2 billion to be distributed to state and local general governments over the 5-year period between January 1, 1972 and December 31, 1976.⁵³ This past year Congress renewed Federal Revenue Sharing for 3-3/4 years and authorized \$6.65 billion for each fiscal year from January 1, 1977 through September 30, 1980. State governments continue to receive one-third of each allocation and two-thirds are distributed to their local governments according to a formula. In renewing the Federal Revenue Sharing Act, Congress deleted the 8 priority categories for local use of funds and eliminated the restriction on the use of revenue sharing funds to match federal grants-in-aid. The states are still required under the law to maintain assistance to local governments equal to a 2-year average of their intergovernmental transfers. Additionally, both state and local governments are required to publish in the local newspaper notice of proposed use prior to budget hearings and after budget adoption. Also required are public hearings on proposed use.⁵⁴ There are very few restrictions on the use of revenue sharing funds.

TAXATION AND FINANCE

In Hawaii, the Federal Revenue Sharing moneys have not been used so much for budget balancing, but rather the counties have largely used it for capital improvement projects, mostly in recreation, culture, and transportation. Honolulu and Kauai have used sizable amounts for police service.⁵⁵

Another form of federal assistance to state and local governments is the block grant. There are now broad programs of support in 5 areas: community development, manpower, law enforcement, social services, and health. Although block grants vary in the number of federal requirements attached, all have administrative requirements of some sort and a required planning process.⁵⁶ One example of the many federal programs is the Comprehensive Employment and Training Act (CETA), passed in 1973, which granted to states and about 450 large cities, including Honolulu, manpower training programs and hiring funds for unemployed workers.⁵⁷

The total operating revenues from federal grants in Hawaii for 1976 were approximately: \$83.5 million for Honolulu, \$11 million for Maui, \$6.3 million for Hawaii, and \$2 million for Kauai.⁵⁸ While Hawaii contributed \$946 million to the national treasury, federal dollars returned to Hawaii in the form of grants to the state and local governments totaled \$430 million in 1976.⁵⁹

Financial Summary

The cost of running county governments in Hawaii grew by 26 per cent between 1975 and 1976 reaching \$328 million. Of that total, the City and County of Honolulu with 80 per cent of the state's population was responsible for 76 per cent or \$251 million of that increase.⁶⁰ The COG Report reviewed budgets, financial reports, and other selected compilations and stated:⁶¹

...that Counties generally are in good financial shape although there are no signs of abatement in the disparity between Honolulu and the Neighbor Island Counties in population, employment, and economic resources and therefore, the ability to support a full level of services.

Debt Limitation

Even the best possible systems of taxation and state aid to local government would not halt the need for another major component of local government finance; that of the power to sell bonds and go into debt to finance long-term projects.⁶² The concern here is that of setting a limit up to which a local government unit may go into debt. A majority of state constitutions limit local indebtedness in at least one of 2 ways:⁶³

- (1) A maximum level of debt is set, usually stated as a percentage of the property value; and/or
- (2) Approval of local voters (a voter referendum) is required before the debt can be incurred.

Each state varies greatly in the restrictions it has imposed upon its local government units. A majority of state constitutions specify some percentage limitations on outstanding debt of their local government units in relation to the property tax. In addition, many of these same states and others have constitutional or statutory requirements for a voter referendum to approve proposed debt.⁶⁴

The debt limitation for Hawaii's local government units is set in Article VI, section 3, of the Constitution. The county debt is limited to 15 per cent of the net real property values within the county. As of December 31, 1976, county general obligation bonds outstanding totaled \$260 million, of which an estimated \$181 million was charged against the debt limits of the counties. In general, while the state has relied on borrowing from the bond market to finance its capital projects, the counties have largely relied on cash.⁶⁵ The Tax Foundation of Hawaii stated:⁶⁶

However, during 1976, actual as well as contemplated sales of bonds by the counties seem to indicate that local governments in Hawaii will turn to the bond market more frequently in the future.

A broader and more detailed study concerning local government's debt limitation, revenue, and finance systems is available in the Hawaii Constitutional Convention Studies 1978, Article VI: Taxation and Finance.

FOOTNOTES

Chapter 1

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3. Joseph F. Zimmerman, "State-Local Relations: The State Mandate Irritant," presented at a Conference on Citizen Input into Funding County Government sponsored by the Human Services Planning Council of Schenectady County, Incorporated, Schenectady, New York, October 12, 1976.
4. National Association of Counties, *From America's Counties Today* (Washington: New County, U.S.A. Center, 1973), p. 37.
5. *Hawaii Const.* art. VII, sec. 2.
6. Memorandum to Chairman Shunichi Kimura, Councilman Clesson Y. Chikasuye, Supervisors Yoneto Yamaguchi and Henry Gomez, from Councilman George Koga, Chairman, Legislative Committee, Hawaii State Association of Counties, on Local Government Issues in Constitutional Convention, November 27, 1967.
7. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 53 (Majority), p. 230.
8. *Ibid.*, p. 231.
9. Memorandum to Legislative Committee Members from Councilman Sandy Holck, Chairman, Legislative Committee, Hawaii State Association of Counties, on Local Government Issues in Constitutional Convention, September 7, 1976.
10. Letter from Mayor Malapit, County of Kauai, to Mimi Beams, August 12, 1977; letter from Leo C. Pritchard, Deputy Managing Director, City and County of Honolulu to Myron Thompson, Chairman, and Members of the Government Organization Commission, July 21, 1976; letter from Chairman Marilyn Bornhorst, City Council, City and County of Honolulu, to Mimi Beams, August 22, 1977.
11. Hawaii, Government Organization Commission, *Report to the Ninth State Legislature of the Commission on Organization of Government*, February 1977, p. 20.
12. *Ibid.*
13. National Association of Counties, p. 51.
14. U.S., Advisory Commission on Intergovernmental Relations, *Substate Regionalism and the Federal System*, Vol. III; *The Challenge of Local Governmental Reorganization* (Washington: U.S. Government Printing Office, 1974), p. 15.
15. Neal R. Pierce, *The Pacific States of America* (New York: W.W. Norton and Company, 1972), p. 316.
16. This population percentage is calculated from July 1976 population figures. Telephone interview with Vicki Kim, Information Specialist, Department of Planning and Economic Development, August 22, 1977.
17. Pierce, p. 320.
18. The population percentage is calculated from July 1976 population figures. Telephone interview with Vicki Kim, Information Specialist, Department of Planning and Economic Development, August 22, 1977.
19. Hawaii, Department of Planning and Economic Development, and Kauai County, Office of Economic Development, *Kauai County Facts and Figures - 1975* (Honolulu: 1975), p. 1.
20. Hawaii, Department of Planning and Economic Development, *City and County of Honolulu Facts and Figures - 1975* (Honolulu: 1975), p. 1.
21. Pierce, p. 330.
22. Hawaii, Department of Planning and Economic Development, *State of Hawaii Facts and Figures - 1975* (Honolulu: 1975), p. 1.

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1. Neal R. Pierce, *The Pacific States of America* (New York: W.W. Norton and Company, 1972), p. 330.
2. Thomas P. Murphy, *Metropolitics and the Urban County* (Washington: Washington National Press, Inc., 1970), p. 37.
3. *Alaska Blue Book, 1975* (2nd ed.; Juneau: Department of Education, Division of State Libraries), p. 139.
4. Harold F. Alderfer, *American Local Government and Administration* (New York: Macmillan Co., 1956), pp. 23-24.
5. *The Municipal Year Book, 1976* (Washington: International City Management Association, 1976), p. 4.
6. *Ibid.*, p. 5.
7. For example, these state constitutions: Arizona: art. XII. Counties, art. XIII. Municipal Corporations; Arkansas: art. XII. Municipal and Private Corporations, art. XIII. Counties, County Seats, and County Lines; Idaho: art. XII. Corporations and Municipalities, art. XVII. County Organization; Kansas: art. 9 Organization of New Counties, art. 12. Corporations; Nebraska: art. IX. Counties, art. XI. Municipal Corporations; North Dakota: art. VI. Municipal Corporations, art. X. County and Township Organization; Oklahoma: art. XVII. Counties, art. XVIII. Municipal Corporations; Wyoming: art. 12. County Organization, art. 13. Municipal Corporations.
8. For example, the state constitutions of: Alaska, Arkansas, Florida, Georgia, Kentucky, Pennsylvania, and Tennessee.

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11. *Fasi v. City and County of Honolulu*, 50 Haw. 277; 439 P.2d 206 (1968).
12. Hawaii, Constitutional Convention, 1968, *Proceedings*, Vol. I, Standing Committee Report No. 53 (Majority), p. 229.
13. *Ibid.*
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15. *The County Yearbook, 1976* (Washington: National Association of Counties, 1976), p. 61.
16. *Ibid.*, p. 3.
17. George S. Blair, "State-Local Relations in 1974-1975," *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 586.
18. *Ibid.*, pp. 586-587.
19. *Ibid.*, p. 591.
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21. *Honolulu Charter* art. XIII, sec. 13-101.
22. *Maui News* (Legal Notice Supplement, Proposed Charter, County of Maui), September 8, 1976, p. 4.
23. Murphy, p. 236.
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29. *The County Yearbook, 1976*, p. 5.
4. Thomas P. Murphy, *Metropolitics and the Urban County* (Washington: Washington National Press, Inc., 1970), p. 235.
5. *The County Yearbook, 1977*, p. 63.
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7. *The County Yearbook, 1977*, p. 70.
8. Blair, p. 587.
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12. *The County Yearbook, 1976* (Washington: National Association of Counties, 1976), p. 62.
13. U.S., Advisory Commission on Intergovernmental Relations, *Substate Regional and Federal System*, Vol. IV; *Governmental Functions and Processes: Local and Area-wide* (Washington: U.S. Government Printing Office, 1974), p. 20.
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17. Letter from Leo C. Pritchard, Deputy Managing Director, City and County of Honolulu, to Myron Thompson, Chairman, and members of the Government Organization Commission, December 29, 1975.
18. Letter from Council Chairman Marilyn Bornhorst, City and County of Honolulu, to Mimi Beams, August 22, 1977.
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23. Bromage, p. 368.
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25. *Ibid.*, p. 82.
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35. *Montana Const.* art. XI, sec. 6.
36. George S. Blair, "State-Local Relations in 1974-1975," *Book of the States, 1976-77* (Lexington, Ky.: Council of State Governments, 1976), p. 586.
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57. Att'y Gen. Ops. No. 62-11 at p. 2 (March 5, 1962).
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59. See, for example, 1977 Haw. Sess. Laws, Act 59.
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