

**ARTICLE VIII****LOCAL GOVERNMENT****Note**

This article was renumbered from Article VII to be Article VIII by Const Con 1978 and election Nov 7, 1978. The former Article VIII now appears as Article IX.

**CREATION; POWERS OF POLITICAL SUBDIVISIONS**

**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. [Ren and am Const Con 1978 and election Nov 7, 1978]

**Attorney General Opinions**

Discussion of general laws. Att. Gen. Op. 61-36.

Law specifically repealing statute pertaining to single county is void as special law. Att. Gen. Op. 62-11.

Pari-mutuel law for a single county would be invalid as special law. Att. Gen. Op. 63-10.

Law conferring power on only certain specified counties is a special law. Att. Gen. Op. 63-22.

Section has prospective effect only, does not affect special laws enacted prior to statehood. Att. Gen. Op. 63-22.

Utilization of classification based upon population for legislation affecting political subdivisions of the State not violative of Constitution. Att. Gen. Op. 65-9.

Law that would confer on city and county power not conferred on other counties is a special law. Att. Gen. Op. 65-20.

A local option law is a general law if it applies to all counties and every county is given the same option. Att. Gen. Op. 67-5.

Repeal of special or local laws and replacing them with grants of general powers having uniform operation in all counties, does not violate Constitution. Att. Gen. Op. 87-1.

**Case Notes**

In broadest sense, to be a "general law" must operate in all counties, but a law may apply to less than all counties and still be "general law" if it applies uniformly to a class of counties. 50 H. 51, 430 P.2d 321.

This provision not violated by Act 47, L 1967, providing for filling vacancy in office of county chairperson. 50 H. 51, 430 P.2d 321.

Subject to this provision requiring "general laws", the legislature is free to enact any legislation affecting the powers of political subdivisions, including amendment of charter provisions adopted pursuant to §2 of this article. 50 H. 277, 439 P.2d 206.

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

Cited: 57 H. 390, 557 P.2d 1334.

**LOCAL SELF-GOVERNMENT; CHARTER**

**Section 2.** Each political subdivision shall have the power to frame and adopt a charter for its own self-government within such limits and under such procedures as may be provided by general law. Such 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; ren and am Const Con 1978 and election Nov 7, 1978]

### Cross References

General powers, see §46-1.5.

### Attorney General Opinions

Until section takes effect on January 1, 1972, legislature may by general law amend county charter. Att. Gen. Op. 70-6.

Legislature may not require those running for county office to resign from present public office. Att. Gen. Op. 75-22.

Counties may provide for nonpartisan election of prosecutor. Att. Gen. Op. 85-7.

Civil service systems defined in §§76-77 and 46-33 are not substantively so different as to represent special, rather than general laws for purposes of this section and article VIII, §6 of state constitution. Att. Gen. Op. 97-6.

### Law Journals and Reviews

Kaiser Hawaii Kai Development Company v. City and County of Honolulu: Zoning by Initiative in Hawaii. 12 UH L. Rev. 181.

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

### Case Notes

A charter framed and adopted as authorized by this section may be amended by the legislature by general law. 50 H. 277, 439 P.2d 206.

Provisions in charter must be limited to self-government of political subdivisions and within limits of general law. 56 H. 582, 545 P.2d 684.

Counties not authorized to include charter provisions repugnant to statutes in areas of civil service and compensation. 59 H. 65, 576 P.2d 1029.

Provisions of Maui Charter on the departments of water supply, police and liquor control relate to executive and administrative structure and organization and are superior to statutory provisions. 59 H. 65, 576 P.2d 1029.

Power of legislature to enact laws of statewide concern not limited by this section; §§46-21.5 and 78-18.3 not unconstitutional under this section as provisions intended to allow for integrated, equitable, and reasonable salaries among top-level officers of all jurisdictions was a matter of statewide concern and thus was a matter within the powers of the legislature. 67 H. 412, 689 P.2d 757.

County charter which permitted zoning by initiative was not superior to state statute. 70 H. 480, 777 P.2d 244.

Challenge to election results regarding proposed amendments to county charter barred by doctrine of laches. 72 H. 499, 823 P.2d 738.

Ordinance in conflict with express provision in county charter was invalid. 72 H. 513, 823 P.2d 742.

## 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 except that all functions, powers and duties relating to the taxation of real property shall be exercised exclusively by the counties, with the exception of the county of Kalawao. The legislature shall have the power to apportion state revenues among the several political subdivisions. [Ren and am Const Con 1978 and election Nov 7, 1978]

### Attorney General Opinions

As section authorizes delegation of taxing power to political subdivisions, §248-2, authorizing counties to set real property tax rate, is not in violation of article VI, §1. Att. Gen. Op. 68-25.

### Law Journals and Reviews

Real Property Tax Litigation in Hawaii. III HBJ No. 13, at pg. 57.

## Case Notes

Where city ordinance did not require that funds generated by a “convicted persons” charge be used to defray the city’s investigative and prosecutorial costs associated with the individual payor’s case, leaving open the possibility that the charge could be used for general revenue raising purposes, ordinance was not a “service fee” under §46-1.5(8), but a tax, which the State did not empower the city to impose; thus ordinance was invalid. 89 H. 361, 973 P.2d 736.

Because this section and §246A-2 cover the whole subject of the counties’ real property taxation power and embrace the entire law on the matter, §248-2, by limiting Maui county’s real property taxation powers, is in conflict and is repealed by implication. 90 H. 334, 978 P.2d 772.

Waiahole Ditch water use permittees being required to fund subsequent stream studies and monitoring activities was not an illegal “tax” where the studies directly benefited permittees by helping them prove as required under §174C-49 that their uses were “reasonable-beneficial” and “consistent with the public interest” and by also allowing them exclusive use of public resources in the interim, despite the present absence of such proof. 94 H. 97, 9 P.3d 409.

The constitutional rule of tax immunity did not operate to immunize the State from the contractual obligations it voluntarily assumed through its leases to pay the real property taxes of its lessors. 99 H. 508, 57 P.3d 433.

“The counties”, as referred to in this section, means county or local governments, i.e., county

councils. 115 H. 15, 165 P.3d 916.

Where charter amendment usurped the county government’s/county council’s “functions, powers and duties relating to the taxation of real property”, the charter amendment was unconstitutional pursuant to this section. 115 H. 15, 165 P.3d 916.

Amounts assessed against insurers for payment into the insurance regulation fund under §431:2-215 was a regulatory fee and not an unconstitutional tax where (1) the charges were assessed by the commissioner; (2) the assessments were placed into a special fund intended to reimburse the division for insurance industry regulating costs; and (3) moneys from the fund to pay for services provided by the departments of commerce and consumer affairs and budget and finance, and to buttress the division’s reserve fund were “used for the regulation or benefit of the parties upon whom the assessment was imposed”. 120 H. 51, 201 P.3d 564.

Where regulatory fees assessed against insurers by the insurance commissioner, an officer of the executive branch, for payment into the insurance regulation fund under §431:2-215 were transferred by the legislature via transfer bills from the insurance division into the general fund, and the regulatory fees became available for general purposes as if derived from general tax revenues, the transfers violated the separation of powers doctrine under this section and §26-10(b). 120 H. 51, 201 P.3d 564.

Cited: 73 H. 449, 834 P.2d 1302.

**MANDATES; ACCRUED CLAIMS**

**Section 4.** No law shall be passed mandating any political subdivision to pay any previously accrued claim. [Ren Const Con 1978 and election Nov 7, 1978]

## Case Notes

Cited: 50 H. 277, 439 P.2d 206.

**TRANSFER OF MANDATED PROGRAMS**

**Section 5.** If any new program or increase in the level of service under an existing program shall be mandated to any of the political subdivisions by the legislature, it shall provide that the State share in the cost. [Add Const Con 1978 and election Nov 7, 1978]

## Cross References

Interpretation of county functions under state water code, see §174C-4.

## Attorney General Opinions

State not required to share cost of maintaining public highways. Att. Gen. Op. 86-15.

If extending survey and reporting requirements to new enterprise zone (EZ) created by the legislature would result in an increase in the level of service under city and county’s existing program, then, unless department was willing to share in the cost, city and county was not required to submit initial survey or annual report on new EZ. Att. Gen. Op. 98-1.

## STATEWIDE LAWS

**Section 6.** This article shall not limit the power of the legislature to enact laws of statewide concern. [Ren and am Const Con 1978 and election Nov 7, 1978]

### Attorney General Opinions

Civil service systems defined in §§76-77 and 46-33 are not substantively so different as to represent special, rather than general laws for purposes of this section and article VIII, §2 of state constitution. Att. Gen. Op. 97-6.

### Law Journals and Reviews

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

### Case Notes

Did not preempt ordinance relating to residential condominium leasehold conversion. 76 H. 46, 868 P.2d 1193.

The power to set exemptions from real property taxation is not a matter of statewide concern reserved to the legislature under this section. 99 H. 508, 57 P.3d 433.

## ARTICLE IX

### PUBLIC HEALTH AND WELFARE

#### Note

This article was renumbered from Article VIII to be Article IX by Const Con 1978 and election Nov 7, 1978. The former Article IX now appears as Article X.

### Law Journals and Reviews

Environmental Protection Based on State Constitutional Law: A Call for Reinterpretation. 12 UH L. Rev. 123.

## PUBLIC HEALTH

**Section 1.** The State shall provide for the protection and promotion of the public health. [Ren Const Con 1978 and election Nov 7, 1978]

### Attorney General Opinions

Enumeration of certain powers by this section was not intended to restrict the legislature. Att. Gen. Op. 68-17.

## CARE OF HANDICAPPED PERSONS

**Section 2.** The State shall have the power to provide for the treatment and rehabilitation of handicapped persons. [Ren and am Const Con 1978 and election Nov 7, 1978]

## PUBLIC ASSISTANCE

**Section 3.** The State shall have the power to provide financial assistance, medical assistance and social services for persons who are found to be in need of and are eligible for such assistance and services as provided by law. [Ren and am Const Con 1978 and election Nov 7, 1978]