

# Result of Con Con vote now in doubt

## The attorney general questions the method of calculating the votes

By Jim Witty  
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If there is a constitutional convention, delegates may want to clarify what it takes to convene one in the first place.

The state attorney general's office is grappling with that question after Tuesday's election. The measure to convene a constitutional convention garnered a simple majority, but did it require a majority of all ballots cast, including blank and spoiled ones for passage?

If so, the measure didn't pass as was widely reported Wednesday.

The state Office of Elections said before the election that a constitutional convention would be convened if more than 50 percent of the voters voted "yes" on the measure, and that blank and spoiled ballots don't come into play.

But Attorney General Margery Bronster questioned the method of calculating a majority at the request of the Elections Commission.

"If the blank ballots have to be counted, clearly it would change the result, and there would be no convention," said Deputy Attorney General John Anderson. "We're taking this very seriously."

Anderson said he has five staffers researching the issue and wants to resolve it "as quickly as possible" so the election results can be certified.

He said the margin of victory for the 1978 con con was so great, the issue didn't arise. But this time, yes votes outnumbered nos by just 3,716. There were more than 45,000 blank ballots.

The state Constitution reads: "If a majority of the ballots cast be in the affirmative ..."

"We're struggling with the language," Anderson said.

No need, contend those on each side of the politically charged issue.

"There's no question you count the blank and spoiled ballots," said Honolulu civil-rights attorney Dan Foley.

Foley said he bases his conclusion on a 1982 opinion from then-Attorney General Tany Hong based on the record from the journal of the 1950 constitutional convention. That record included discussion of the term "cast," which was taken to include spoiled and unmarked ballots.

Newly elected Republican Rep. David Pendleton disagrees.

"The election results on the question of con con are straightforward," he said, referring to section 11-151 of the Hawaii Revised Statutes.

"The law on voting disposition provides that if a contest or question requires a majority of the votes for passage, any blank, spoiled or invalid ballot shall not be tallied for passage or as votes cast except for ratification of a constitutional amendment."

Fritz Rohlfing, spokesman for Citizens for a Constitutional Convention, said he's convinced a convention should be convened.

"I took a look at the Constitution and took a look at the statute," he said.

"In looking at those, it's clear to me that blank, spoiled or invalid ballots are not voted, that they're only considered as to constitutional amendments. ... I find it distressing that once we have a yes vote that they want to move the goal posts back."

In a statement issued by the state House Republican caucus, Rep. Gene Ward argued that the attorney general should not have jurisdiction over the matter.

"Ms. Bronster is compromised by the fact that one of the issues to be considered by the convention will be to amend the Constitution to require that the attorney general be elected," he said.

"The governor presently appoints the attorney general."

Other issues expected to come up if a convention is convened include same-sex marriage, legislative term limits and Hawaiian sovereignty.

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Star-Bulletin reporter Mike Yuen contributed to this report.

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