

Informal Advisories

From: Adam.R.Paddock@hawaii.gov on behalf of oip@hawaii.gov
Sent: Tuesday, June 19, 2007 12:01 PM
To: Kidani, Michelle N
Subject: RE: Clarification on Sunshine Law

Dear Ms. Kidani:

To clarify, to date we have instructed boards that they should announce the date, time and place of the reconvened meeting. We have not advised that it would be proper to continue a meeting without doing so. That issue has never been raised before and, therefore, without further review, I cannot tell you what OIP would opine. If you anticipate that boards might have difficulty in making that announcement, you may seek a formal opinion from OIP on how to address those difficulties.

Please note that a meeting is continued to complete consideration of issues on an agenda that has already been properly filed. Accordingly, **no new agenda need be filed**. In fact, the filing of another agenda may mislead members of the public into believing that a new meeting is being held rather than a continued meeting. This is one reason why we advise that notice should be given by announcement of the date, time and place for the continued meeting at the time the initial meeting is recessed. Further, continued meetings generally reconvene within a short time period, often within the next day or two.

Because no notice and agenda must be filed for a continued meeting, the time for filing an agenda, namely the six day requirement, is inapplicable.

Please feel free to call me if you like to discuss this matter further.

Very truly yours,
Cathy L. Takase
Staff Attorney

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813
Tel.: 808-586-1400
Fax: 808-586-1412
E-mail: oip@hawaii.gov
Web site: www.hawaii.gov/oip

From: Dawn.M.Shimabukuro@hawaii.gov on behalf of oip@hawaii.gov
Sent: Friday, July 27, 2007 7:41 AM
To: Mick, Bryan
Subject: Re: Sunshine requirement

Dear Mr. Mick:

There is no state statute requiring Sunshine Law training for commission or board members. I am unaware of any specific boards or commissions that have rules requiring training.

Very truly yours,
Cathy L. Takase
Acting Director

From: Adam.R.Paddock@hawaii.gov [mailto:Adam.R.Paddock@hawaii.gov] **On Behalf Of**
oip@hawaii.gov
Sent: Tuesday, October 30, 2007 11:50 AM
To: Mick, Bryan
Subject: Re: Do minutes have to be in chronological order?

Hi Bryan,

This is in response to your inquiry regarding whether minutes must be done in chronological order. Section 92-2, HRS, requires minutes to "give a true reflection of the matters discussed at the meeting" and we would advise that minutes reporting the actual sequence of agenda items that was followed is the best format for giving a "true reflection of the matters discussed." If there is a good reason for preparing minutes that do not report the matters in chronological order, we would recommend that the minutes nonetheless make clear that the matters are being reported out of the sequence followed at the meeting

so that the public is not misled as to how the meeting had proceeded.

Very truly yours,

Lorna Aratani
Staff Attorney

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813
Tel.: 808-586-1400
Fax: 808-586-1412
E-mail: oiip@hawaii.gov
Web site: www.hawaii.gov/oiip

From: Adam.R.Paddock@hawaii.gov on behalf of oiip@hawaii.gov
Sent: Friday, November 16, 2007 4:21 PM
To: Mick, Bryan
Subject: Re: Taking off the Board member hat.

Bryan,

You're correct in thinking the board members can't discuss matters not on the agenda, regardless of whether they first announce that they're speaking as a private citizen. Board members are board members from the time they are elected or appointed to the board until the time they leave the board, and the Sunshine Law comes into play whenever board members discuss board business. The limitation on board member discussion of matters not on the agenda is explained in [OIP Op. Ltr. No. 05-02](#), so you can refer the board members to that.

Please let me know if you have further questions.

Aloha,
Jennifer

Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel St., Suite 107
Honolulu, Hawaii 96813
Tel.: 808-586-1400
Fax: 808-586-1412
E-mail: oiip@hawaii.gov
Web site: www.hawaii.gov/oiip

From: Dawn.M.Shimabukuro@hawaii.gov on behalf of oiip@hawaii.gov
Sent: Monday, December 24, 2007 10:48 AM
To: Walterbea Aldeguer
Cc: Manke, Joan; Kidani, Michelle N; Apo, Todd K; Wong, Bambi
Subject: Re: Fw: Complaint RE: NC Public Hearing Notice

Dear Mr. Aldeguer:

This e-mail responds to your e-mail below. It is our understanding that there was an error in the street address given for the school meeting place in both the commission meeting notice that was filed for Sunshine Law purposes with the county clerk's office. Please note that notice for Sunshine law purposes is governed by part I of chapter 92, Hawaii Revised Statutes. We spoke with the neighborhood commission office earlier Friday regarding this same issue. For purposes of the Sunshine Law, we advised that the commission should post notice at the address site notifying members of the public of the correct location and should delay commencement of the meeting to allow those persons to move to the correct location of the meeting. We were informed that this is what the commission had intended to do. Given the close proximity of the correct meeting site, we advised that these actions would be sufficient for purposes of the Sunshine Law and that the meeting would not need to be cancelled.

Very truly yours,
Cathy L. Takase
Staff Attorney
Office of Information Practices
State of Hawaii
No. 1 Capitol District Building
250 S. Hotel St., Suite 107

Honolulu, Hawaii 96813
Tel.: 808-586-1400
Fax: 808-586-1412
E-mail: oiip@hawaii.gov
Web site: www.hawaii.gov/oiip

From: Adam.R.Paddock@hawaii.gov on behalf of oiip@hawaii.gov
Sent: Thursday, February 07, 2008 8:09 AM
To: Mick, Bryan
Subject: Re: Request for opinion (2-6-08)

Dear Mr. Mick:

You asked the following questions:

- 1) Does any section of the Sunshine Law regulate the mailing of minutes?
- 2) Does any section of the Sunshine Law regulate the posting of minutes to the Neighborhood Commission Office's website?
- 3) What is the definition of 'made available thirty days after the meeting?' How does one determine if the NCO is in compliance with this requirement?

I will respond to them in order:

- 1) There is no provision in the Sunshine Law that requires a board to mail copies of the minutes. Requests for minutes should generally be treated as requests for records under chapter 92F, Hawaii Revised Statutes, the Uniform Information Practices Act (the "UIPA").
- 2) There is no provision in the Sunshine Law that requires a board to post its minutes on the NCO's website.
- 3) Section 92-9(b) generally requires that minutes be made available within thirty days after the meeting. OIP has opined that the UIPA and the Sunshine Law must be interpreted to require that minutes be available to the public on the 30th day after the meeting whether they are in final form, draft form or in note form. See OIP Op. Ltr. No. 02-06 for a complete discussion.

I trust that this fully answers your questions. Please feel free to contact this office if you require further assistance.

Very truly yours,
Cathy L. Takase
Staff Attorney

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E-mail: oiip@hawaii.gov
Web site: www.hawaii.gov/oiip

From: Adam.R.Paddock@hawaii.gov on behalf of oiip@hawaii.gov
Sent: Thursday, February 07, 2008 11:50 AM
To: Mick, Bryan
Subject: Re: FW: Request for permission to proceed with development of web blog site

Dear Mr. Mick:

You have asked for guidance regarding the Kaneohe Neighborhood Board's proposal to use a web blog to allow the board members to conduct discussions on board business, with members of the public being allowed to join in the discussion. OIP has not issued a formal opinion on this matter, but I offer the following general advice.

The Sunshine Law does not anticipate internet forms of discussion such as chat rooms, blogs, or mailing lists, and thus it does not provide specifically for their use. This may be an issue that the legislature will choose to address in the future, assuming that there is an interest on the part of boards and the public in using blogs and other methods to increase public access. However, for now any effort at blogging by board members must fall within the Sunshine Law's current provisions.

Although the board may utilize the proposed web blog under a permitted interaction as explained below, it cannot use it to hold a "meeting" of the board. The Sunshine Law does not provide for a board meeting without public access to a physical location. We have generally advised that a meeting through use of the internet would meet the requirements of the Sunshine Law if all of the requirements allowing for a meeting by videoconference under section 92-3.5, HRS, are met. Among other things, this section requires a system that allows "both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at

any videoconference location." Haw. Rev. Stat § 92-3.5(a) (emphasis added). Thus, meetings over the internet would require the use of webcams and public access to at any location where a board member is. Given that the proposed web blog would not meet those requirements, it is likely that OIP would find that holding board meetings by way of the web blog would violate the statute.

However, board members may be able to use the web blog to discuss board business if it is done in accordance with a permitted interaction. For example, two members may participate in a discussion about board business with members of the public under the two member permitted interaction. See Haw. Rev. Stat. § 92-2.5(a). Note that this means that those two members would need to be careful to not discuss the same matter with any other member. The board should also caution these members about not using the web blog to have their views passed on to other members who may later separately participate through the same permitted interaction. The board could also consider assigning an investigative task force of less than a quorum of members who could be assigned to discussion specific topics under section 92-2.5(b) as long as the requirements of that section are met.

We note, however, that with running discussions on the same business it may prove difficult for the members to avoid unintentionally violating the statutes. The board may be able to prevent this by providing strict guidelines that limit discussions to an identified topic when members are participating through the various permitted interactions.

Please feel free to contact this office if you require further assistance.

Very truly yours,
Cathy L. Takase

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