

Wednesday, June 22, 2011

The HSAC conference started with a presentation by the Office of Information Practices' new Director Cheryl Kakazu Park and Staff Attorney Jennifer Brooks going over sunshine law practices. It went over the ethical considerations for Counsel when advising sunshine law boards.

She went over the intent of sunshine law and how it works

HRCP specifically recognizes public good in the governmental context as a factor tempering an attorney's duty of confidentiality.

A lawyer may reveal information relating to representation of a client to the extent the lawyer reasonably believes necessary either to prevent a public official or public agency from committing a criminal or illegal act that a government lawyer reasonably believes is likely to result in harm to the public good, or to rectify the consequences of a public official's or a public agency's act which the government lawyer reasonably believes to have been criminal or illegal and harmful to the public good.

Sunshine Law Application

1. Legal requirements for Sunshine boards
 - a. Adequate and timely notice of meetings
 - b. Limitation on closed session
 - c. Minutes
 - d. Discussion outside a meeting only as specifically allowed
2. Criminal provision (92-13; misdemeanor for willful violation)
3. Public purpose of law

92-1 Declaration of policy and intent. In a democracy, the people are vested with the ultimate decision-making power. Governmental agencies exist to aid the people in the formation and conduct of public policy. Opening up the governmental processes to public scrutiny and participation is the only viable and reasonable method of protecting the public's interest. Therefore, the legislature declares that it is the policy of this State that the formation and conduct of public policy – the discussions, deliberations, decisions, and action of governmental agencies, shall be conducted as openly as possible. To implement this policy the legislature declares that:

- (1) It is the intent of this part to protect the people's right to know;
 - (2) The provisions requiring open meetings shall be liberally construed;
- and

(3) The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings.

- a. Gov't attorney should be mindful of that purpose.
- b. Better sense for why the law works the way it does and what actions may be inconsistent with the law.
- c. Atty who raises the question of whether Sunshine allows something a client board wants to do notwithstanding pushback helps the board in the long run, as well as public, by avoiding a violation that could come back to bit the board.

What if a Board Member Starts Talking about Stuff that Should be Confidential During the Public Session?

1. Advise exec session
2. Remind that decision to waive confidentiality should belong to the board, not a single member.\
3. Depending on the issue, remind of obligations toward third parties whose confidential info is being discussed.

To Whom Does Government Attorney Does Owe Duty When Representing Sunshine Law Boards?

- a. Government client's fiduciary duty toward those laws intended to serve. It protects the public's right to know
- b. Public Purpose of Sunshine Law

Hypos

1. Executive session discussion moving beyond what's covered by topic and purpose – "In no instance shall the board make a decision or deliberate toward a decision in an executive meeting on matters not directly related to the purposes specified.
2. Inadequate minutes of executive session – Exec session minutes still required to meet minimum standard including the
3. Reflection of matters discussed and participant views; substance of all matters discussed/decided; vote by member
4. Deficiencies not obvious to public because minutes not public
5. Potential for public harm – minutes may be requested in future/may become public; minutes part of historic record

What is attorney's obligation who observes Sunshine Law concerns during a meeting?

1. Straying from the agenda

2. Board asks “can we add _____ (92-7); minor items can be added with 2/3 vote of all members; major items cannot; if not enough members, cannot
3. PIG reports and board wants to discuss right then – statute requires no discussion till next meeting after report
4. Video feed not working for meeting noticed as videoconference – notice requirement – all locations member attending from; even if quorum in one location by statue still cannot hold meeting if cannot get it working; if video working at beginning, but goes down but still have audio, ok
5. Can’t take all testimony at end of meeting, testifiers needs to be called up by category of subject.

WELCOMING AND OPENING REMARKS BY

Emcee Deidre Tegarden, Governor Abercrombie’s Maui Liaison
Honorable Joseph Pontanilla, Treasurer, HSAC, Member, Maui County Council
Honorable Mel Rapozo, President, HSAC; Member, Kauai County Council
Honorable Danny A. Mateo, Chair, Maui County Council
Honorable Alan M. Arakawa, Mayor, Maui County
Honorable B. Glen Whitley, President, National Association of Counties (NACo):
County Judge, Tarrant County, Texas

LOOKING BACK AND LOOKING FORWARD: THE RELATIONSHIP BETWEEN THE COUNTIES AND THE STATE (Panel Discussion)

Panel: Hon. George R. Ariyoshi, Former Governor, State of Hawaii, Hon Derek S. K. Kawakami, Member, Hawaii State House of Representatives; Honorable Bernard Cravalho, Mayor, Kauai County, Honorable Shan Tsutsui, President, Hawaii State Senate

What State does and what Counties do.

Health, social services, education – state
Fire, police, roads – 2/3 state; 1/3 county

What exactly is role of county?

Highway – county or state – understand each other’s responsibility. Have federal funds to help state and county. State and county get together to see what they can do together. Working on connectivity.

Governor Ariyoshi brought the past up to the present, emphasizing to save money during the good years for the lean years. Take good periods and manage it well – so don’t overspend. Take good times to survive when things are bad.

There is a fairness of tax system; shares burden with Tax Department.
Hawaii one of the best tax systems in the states.

Are counties moving in right direction. Yes. People who serve now are doing their best and are trying hard. Council of Mayors and HASC serve the same people

How can county be more effective? Form better working relationships, HSAC is useful. Counties' challenge is on different wave length with the legislature. Legislature moves more speedily. To be more effective, need to give HASC members latitude to move.

Shan Tsutsui – Federal highways – transferring responsibility from state to county, Need feedback from county to work together with state.

Is there a need for HSAC? Legislature needs to get an understanding of what problems there are. HASC can do this. Legislature needs to spend time with Council to help ID needs for county. They need guidance.

What do you do to help get legislation passed? Start work before session begins. Building relationships, work together – connectivity.

What about individual islands, rather than Oahu only. We are fighting for limited resources and cannot do anything about it. We should take longer look not look only at the limited time.

Mayor Cravalho – Getting in early to the game, right connection, work with state and county council and mayor. Form partnerships with state/county policy/procedure.

It was suggested for the Legislature to open up free time for public to come and ask questions. Gov Ariyoshi disagrees and said if the legislatures open up free time where anybody can come at anytime, the Legislators cannot get anything done. He again reiterated to only spend money you have. You have to understand what other person's goal is and work with it.

Question – How can we meet needs of our citizens. Gov Ariyoshi's answer is to have mutual respect for one another.

Where do counties stand as far as TAT going forward? Senator Tsutsui's answer – Counties should return fair share of TAT and look for other source of revenue. Restructure, retool state government. Eliminate programs and services – consolidating departments Use technology to your advantage.

WEDNESDAY AFTERNOON –

After the morning conference I toured the Pacific Disaster Center.

THURDAY, JUNE 23, 2011

SOCIAL MEDIA AND OPEN GOVERNMENT (Panel Discussion)

Social Media – Proper Use Policy

Social Media including Twitter, Facebook, Blogging, and other internet based media, are powerful communication tools. We use them for various purposes, both public and private, and it's important to distinguish between the two when using social media at and for work.

Personal or private use during work hours is strictly prohibited. Any such use should occur on employee's personal, after hours or break times, provided that use of government computers is prohibited because of the potential misuse or possible threats to system.

When using social media at work and as part of your job, the following rules shall be adhered to because whether you are posting as yourself or for your boss, there remains a public image that is being presented and any posting can potentially be discovered by others and possibly broadcast to millions.

1. Any disparaging or extremely negative comments about specific individuals could be defamatory or could invade their privacy. Thus, these statements shall be avoided.
2. Do not disclose any confidential or proprietary information. This could subject you or your boss to liability.
3. Photographs, video clips, pictures or other images of any person should only be used with their permission unless it was obtained and used for public dissemination since private personal have rights to the use of their images.
4. When using material from another source, especially when blogging, proper credit to the source must be given to avoid any copyright, trademark or other intellectual property issues.
5. Private or personal use of the Hawaii State Seal, or other official symbols without prior authorization is prohibited.
6. Business promotion, endorsement of products, marketing or any other business enterprise is prohibited
7. Campaign or electoral related postings, statements, or images are strictly prohibited
8. Use shall also be consistent with the County's policy on computer use and equipment.

Violations of these policies may result in reprimand, suspension or termination with or without notice.

Important points about social media:

Mind walk your workflow.

Don't forget to engage

Content important to social media
Timely first hand information
Be aware of image you are putting out there
Just because you work for government, don't be boring, be a real person
Be informative
Be interesting
Be respectful And
Be read.

When using social media in a legislative office, determine specific benchmarks and goals. Decide what tools you will be using – facebook, twitter, video u-tube Engage a constituent or create on-line presence.

First, ask yourself question, “Why do I want to join this social media values – it has no responsibility or accountability on internet. Social media values should be your own personal values. LISTEN, while listening, do an assessment of your department, your company – introduce yourself first and be invited to respond. It is about conversation and it still deals with people.

How do you get more followers? Contribute value. Develop values by listening to what people need and want. Then document your thoughts. Know that the content is based on facts not on anything else. Build a community.

How does Social Media affect current law? Does twitter and facebook violate sunshine law? You don't know who friend is, there may be 2 or more board members on twitter or facebook.

Take first steps to allow government to use social media. Change sunshine law or UIPA. Need proper notice to change law. Should sunshine law allow non-written material like streaming. Records should be kept more than 2 years or 6 years. Sunshine law has no records retention policy. Facebook or twittering has no sunshine law?

HAWAII GREEN JOBS

Are people willing to pay for green products? It is capital versus labor. There is an increasing environmental concern. Green job is one that engages in economic activity that makes positions impact on the environment or energy sustainability. When a job containing green responsibility and is only on a part time basis, it is considered green whenever that responsibility occurs on a recurring basis. Profitability of green jobs are being investigated at the state level in DBED.

GOVERNMENT PARTNERSHIPS & THE OFFICE OF HAWAIIAN AFFAIRS

Office of Hawaiian Affairs began in 1978.

Finding affordable housing for native Hawaiians – partner with the county. Biggest issue is seeking Federal recognition for Hawaiians. Need economic self-sufficiency, need education.

GOVERNMENT EFFICIENCY

Auditors job is to say exactly what your job is. Talked about establishment of the State Auditor through Constitutional Convention and what state auditor's job is and what it does. Hawaii has 8 year term for auditor – longer than any elected official. It is part of the executive branch.

You need your audit function so the truth may be told. There is a lot of confidentiality rights in audit, and they don't use names.

The State Auditor makes sure you are functioning within framework of the law. They look for effectiveness rather than efficiency and ask the question, "Is program achieving what it is meant to achieve?"

KEYNOTE ADDRESS: MOVIE PRODUCER RYAN KAVANAUGH ON HAWAII'S FILM & TELEVISION INDUSTRY

Mayor Alan Arakawa said they will establish revolving fund to be able to work with film industry. We have to move forward to create more economic engines for ourselves.

It is more expensive to film in Hawaii, 80% of film is filmed on a sound stage. Hawaii has numerous locations for building a stage which would not have any adverse affects on location.

Enhanced credit in Hawaii cost 3% more to film average hourly film, plus hotel rates cost more. How can Hawaii become a competitive location to film. We need a tax incentive.

Currently every \$1.00 spent generates \$1.29 in income. In the future, projected rate would be for every \$1.00 spent, \$1.70 would be generated in income. Income will generate tens of \$1,000's of dollars.

CONCLUSION

This conference helped support the goals of the Hawaii State Association of Counties and showed how connectivity between city and state is important in furthering the counties' and the state's economic future.

City Council
City and County of Honolulu

CLAIM FOR TRAVEL REIMBURSEMENT

Date: June 29, 2011

Traveler: Karen Scharfenstein

Event: Hawaii State County Convention 2011 HSAC Annual Conference

Location: Wailea, Maui

Dates: From June 22, 2011 To June 23, 2011

Description	Amount	Notes:
1. Registration Fee		
2. Airfare	\$195.40	<i>Online receipts attached</i>
3. Hotel		
4. Meals		
5. Ground Transportation	\$70.93	<i>Receipt attached</i>
6. Tips		
7. Other		
Other		
Other		
8. Adjustment		
TOTAL REIMBURSEMENT	266.33	

This is to certify that the above data, based upon receipts submitted to Council Administrative Support Services via a CCLTRVL02 form, is accurate. Further, I am claiming reimbursement for expenses associated with a trip in which City business was conducted and personal funds were used to advance payment:

Karen Scharfenstein
Signature of Traveler

June 29, 2011
Date