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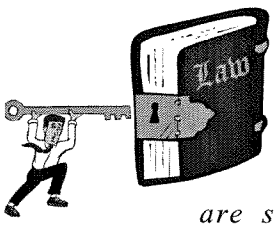
OIP Guidance

Open Meetings: Notices, Agendas, & Testimony

In 1998, the Legislature gave the OIP the additional responsibility of administering Hawaii's open meetings law, Part I of chapter 92, Hawaii Revised Statutes ("Sunshine Law"). The full text of chapter 92 is available online at ***www.state.hi.us/oip****. Here are some highlights of the law regarding meeting notices, agendas, and testimony.*



Q. Are board meetings public?

The answer is yes, but with certain exceptions. Section 92-3, Hawaii Revised Statutes, mandates that board meetings be open to the public "unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5." Sections 92-4 and 92-5 cover **executive meetings**, which are not open to the public, and list the circumstances when a board may convene an executive meeting. Another exception is for **limited meetings** (section 92-3.1). Boards may hold limited meetings closed to the public only if they must meet at a location that is dangerous to health or safety.

Q. What is a "board?"

Section 92-2 defines "board" as "any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and which is required to conduct meetings and to take official actions."

Q. Do boards have to accept testimony?

Yes. Section 92-3 addresses both **written and oral** testimony. Boards must give "all interested persons an opportunity to submit data, views, or arguments, in **writing**, on any agenda item." Boards also must give "all interested persons an opportunity to present **oral** testimony on any agenda item."

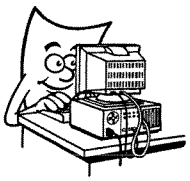
Q. Must the board give public notice of meetings?

Yes. Section 92-7 states that written public notice must be given at least **six calendar days** before the meeting. The notice must include an agenda "which lists all of the items to be considered at the forthcoming meeting, the date, time, and place of the meeting, and in the case of an executive meeting the purpose shall be stated." The notice is to be filed in the Office of the Lieutenant Governor or the County

See **Open Meetings**, *p. 2*

Electronic Transmission of Testimony

In Opinion Letter No. 03-06, dated May 2, 2003, the OIP concluded that boards must accept testimony relating to an item on the board's agenda submitted by e-mail or facsimile (see the May 2003 issue of *Openline* at page 2). In that case, a member of the public had submitted testimony by way of an e-mail to the board's chair, who inadvertently did not recognize that the e-mail was intended for the entire board and, therefore, did not distribute the testimony to the other board members.



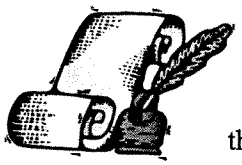
The OIP recognizes that board members are often overwhelmed with, for instance, SPAM e-mails, making it difficult to separate the wheat from the chaff in the inbox. The OIP further recognizes that, because of the number of e-mails certain board members receive, those board members may not recognize that an e-mail is intended to be testimony to the entire board. The OIP encourages boards to establish procedures to resolve this problem.

One suggestion is for the board to designate a specific e-mail address to receive electronic testimony and to specify, in the meeting notice, the e-mail address where electronic testimony should be sent. If the public chooses to send e-mail testimony to an address other than that specified in the notice, for instance, to a board member, the public assumes the risk that the board member will not recognize the e-mail as testimony intended for the entire board.

Recent OIP Opinion

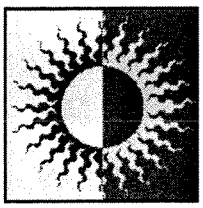
➤ *Voting in Executive Meetings*

Boards subject to the Sunshine Law may vote in executive meetings. To require an open vote on matters discussed in executive meetings would, in many circumstances, defeat the purpose of going into an executive meeting.



Committees of boards subject to the Sunshine Law are also subject to the Sunshine Law and may enter executive meetings in accordance with sections 92-4 and 92-5, Hawaii Revised Statutes. Those committees may also vote in executive meetings when necessary to avoid defeating the lawful purpose of the executive meeting.

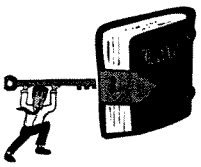
Boards and committees may vote in a closed meeting on matters involving expenditures of public funds. Hawaii's Procurement Code states that boards need not comply with the Sunshine Law for certain procurement matters. In other circumstances, boards may vote in closed meetings on expenditures of public funds only when such votes properly fall into one of the exceptions to open meetings at section 92-5, Hawaii Revised Statutes.



Votes taken in executive meetings need not be disclosed to the public because the Sunshine Law allows minutes of executive meetings to be withheld so long as their publication would defeat the lawful purpose of the executive meeting, but no longer. Once disclosure of votes taken in executive meetings does not defeat the lawful purpose of holding an executive meeting, the votes should be disclosed.

Members of the Honolulu Police Commission did not violate the Sunshine Law by not disclosing how they voted on whether to approve a police officer's request that the City pay for the legal defense of his criminal indictment until the officer and his attorney had been informed of the decision. The Commission's hearing was a contested case hearing under the Hawaii Administrative Procedures Act, chapter 91, Hawaii Revised Statutes ("HAPA"). Thus, the decision of members of the Commission to delay disclosing how they voted was not subject to the Sunshine Law. *[OIP Op. Ltr. No. 03-07, May 28, 2003]*

Open Meetings *(from p. 1)*



Clerk's office, as well as in the board's office, and also posted at the meeting site when feasible.

Q. What if the public notice is filed less than six days before the meeting?

Section 92-7 (c) states that if the written public notice is filed less than six days before the meeting, the meeting must be canceled and the chairperson or director is required to post a notice canceling the meeting at the place of the meeting.

Q. Can the board change the agenda?

The law specifies when and how agendas may be changed. Section 92-7 (d) states that once an agenda is filed, the board shall not add items to the agenda "without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons."

Q. Need help with the law?

If you have questions about open meetings or other provisions of the Sunshine Law, please contact the OIP and ask for the Attorney of the Day.

Staff Update

The Office of Information Practices bids a fond farewell to **Joy Fujimoto**. Joy, who served with distinction the past two years as Secretary to the Director, has transferred to the Crime Victim Compensation Commission, which is part of the Department of Public Safety.

We will miss our coworker and friend, but everyone at the OIP wishes Joy the very best in her new position. And yes, we do have Joy's new phone number!

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