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January 13, 2004

The Honorable Cynthia H. Thielen
Representative, District 50
Hawaii State Legislature
415 South Beretania Street, Room 443
Honolulu, Hawaii 96813

Mr. Todd K. Apo
Ko Olina Resort & Marina
55 Merchant Street, Suite 1500
Honolulu, Hawaii 96813

Re: Board Members Discussion of Official Business Outside of a Duly Noticed Meeting; E-Mail Communication

Dear Representative Thielen and Mr. Apo:

This is in response to Representative Cynthia H. Thielen's November 26, 2003 request to the Office of Information Practices ("OIP") for an investigation into the Landfill Selection Committee's ("Committee") compliance with part I of chapter 92, Hawaii Revised Statutes ("HRS") ("Sunshine Law"). The alleged violations concern interactions among Committee members outside of publicly noticed Committee meetings. Upon a review of the record, the OIP, *sua sponte*, raises additional issues concerning e-mail communications between Committee members and the minutes maintained by the Committee.

ISSUES PRESENTED

I. Whether, under the Sunshine Law, a board member may seek to obtain information regarding the positions of other board members concerning matters over which the board has supervision, control, jurisdiction or advisory power outside of a duly noticed meeting.

II. Whether, under the Sunshine Law, board members can vote on a matter over which the board has supervision, control, jurisdiction or advisory power via e-mail.

BRIEF ANSWERS

I. No. Generally speaking, discussion among board members concerning matters over which the board has supervision, control, jurisdiction or advisory power and that are before or are reasonably expected to come before the board, outside of a duly noticed meeting, violates the Sunshine Law. That is not the case if the discussion is authorized as a permitted interaction under the Sunshine Law. One of those permitted interactions, section 92-2.5(a), HRS, authorizes two members of a board "to gather information from each other about official board matters to enable them to perform their duties faithfully, so long as no commitment to vote is made or sought." Section 92-2.5(a), HRS, does not authorize a board member to seek or to obtain the position of other board members outside of a duly noticed meeting on a matter that is before or reasonably expected to come before a board. In fact, section 92-2.5(a), HRS, expressly prohibits solicitation of such positions.

II. No. Under the Sunshine Law, board members are not authorized to vote via e-mail concerning matters over which the board has supervision, control, jurisdiction or advisory power and that are before or are reasonably expected to come before the board.

FACTS

The Landfill Committee was established to assist the City and County of Honolulu ("City") to make a decision concerning the location of a future sanitary landfill on Oahu. By means of a Decision and Order Approving Amendment to Special Use Permit adopted June 5, 2003 ("Order"), the Land Use Commission of the State of Hawaii granted a permit to expand the Waimanalo Gulch Sanitary Landfill ("Waimanalo Gulch") on 21 acres of land.

The approval was subject to 19 conditions. According to the Order, the Department of Environmental Services, City and County of Honolulu ("ENV") "presented a chart entitled 'Mayor's Blue Ribbon Landfill Site Selection Committee, New Landfill Timeline, March 27, 2003.'" Order, p. 5. The Order states the ENV "represented, among other things, that it would continue to seek alternate disposal sites[.]" Id. One of the Order's conditions directed the Committee to recommend a new landfill site to the City Council, City and County of Honolulu ("City Council") by December 1, 2003. Order, p. 7. If the City Council does not select a new site by June 1, 2004, the special use permit for the Waimanalo Gulch will expire. Id.

The ENV appointed 16 individuals to serve on the Committee by means of a letter dated July 3, 2003. That letter tasked the Committee with helping the City to establish site selection criteria and to recommend one or more sites to the City Council for approval of the location of the next municipal solid waste landfill. See Exhibit A. The City has provided the OIP with a list of the Committee members and meeting dates between July and November 2003. See Exhibit B. The Committee also met on December 1, 2003. See Exhibit C. Additional information concerning the Committee's work, including the Committee's final report, can be accessed via the internet at http://www.opala.org.

Representative Thielen alleges that, outside of a properly noticed meeting, Committee member Mr. Todd K. Apo solicited and obtained signatures from eight other Committee members on two documents related to the decision making function of the Committee. Copies of the documents are attached as Exhibit D and E. Nine Committee members, a majority of the 16 member Committee, signed Exhibit D. Seven Committee members signed Exhibit E. Representative Thielen's November 26, 2003 letter alleged that, if the Committee were to adopt the positions expressed in Exhibit D and E, the "product of work done in open meetings" would be altered.

According to Representative Thielen, the Committee operated its meetings pursuant to the Sunshine Law, publishing timely notice of meetings and affording the opportunity for community input and discussions.

Representative Thielen seeks clarification of whether the discussions concerning the issues set out in the documents attached as Exhibits D and E constitute violations of the Sunshine Law. Those documents advise that

those signing are members of the Committee. Exhibit D states that those signing:

> require that Waimanalo Gulch be removed from any further consideration by the Committee as a potential landfill site, in accordance with the Land Use Commission Order.

Exhibit E states that those signing:

> understand the Committee was charged with making a recommendation for a single landfill by December 1, 2003, and that this single recommendation could not be the Waimanalo Gulch landfill site. Consistent with this understanding, we recommend Nanakuli B as the new landfill site.

Mr. Apo, on the other hand, advises that signatures were obtained on the documents as authorized by section 92-2.5, HRS, and were neither a vote nor a commitment to vote, but an opportunity for Committee members to "record and inform other members of their position on certain matters."

At the December 1, 2003 Committee meeting,[1] Mr. Apo made a motion to change the Committee process from consensus to voting, which motion passed with nine in favor and four opposed. The four Committee members opposing the motion resigned from the Committee and left the meeting.[2] Mr. Apo then made a motion to remove Waimanalo Gulch from the recommended sites, which motion passed, with nine in favor and none opposed. The minutes[3] indicate that "[t]he recommendations section of the report will be amended to reflect sending 4 sites forward and the resignations of the Committee members concerning this action will be included."

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[1] The December 1, 2003 Committee meeting took place after Representative Thielen's November 26, 2003 request to the OIP for an investigation.

[2] See Exhibit C.

[3] The records of the Committee's meetings are not referred to as minutes, but rather contain the notation "Group Memory." As the Committee is subject to the Sunshine Law, and thus required to keep written minutes of all meetings (see section 92-9(a), HRS), and as the "Group Memories" constitute the written record of the Committee's meetings, we will refer to them as minutes.

In a December 5, 2003 letter to the Department of the Corporation Counsel, City and County of Honolulu ("Corporation Counsel") and the ENV, the OIP asked that the City present its position as to whether the Committee is subject to the Sunshine Law and to respond to Representative Thielen's complaint. The Corporation Counsel responded in a letter dated December 12, 2003, that "the City is of the opinion that the Landfill Selection Committee is subject to the Sunshine Law." See Exhibit F.

On December 16, 2003, the OIP advised Mr. Apo of the OIP's investigation and the Corporation Counsel's opinion that the Committee is subject to the Sunshine Law. The OIP also asked that Mr. Apo provide the OIP with information he deemed to be relevant to the OIP's investigation.

In a letter dated December 29, 2003, Mr. Apo told the OIP that ENV appointed a facilitator (not a Committee member) who advised the Committee that all its decisions were to be reached by consensus, that eight potential sites were provided to the Committee by ENV, and that three sites were eliminated by unanimous action of the Committee. According to Mr. Apo, at the Committee's November 7, 2003 meeting, the Committee was unable to reach a consensus on the remaining five sites. Mr. Apo advises that he asked that the Committee vote on removing additional sites and selecting one site as the Committee's recommendation, but that the facilitator advised that the Committee must reach its decisions by consensus.

Mr. Apo's December 29, 2003 letter also alleges:

- None of the Committee's minutes reflect the Committee members' opposition of the inclusion of the Waimanalo Gulch as a site.
- The Committee tried to keep the process as open as possible by following various provisions of the Sunshine Law, but the Committee never strictly adhered to the law's requirements.
- ENV, on October 15, 2003, solicited an e-mail vote from Committee members' as to their preference for a minimum 10 or 15 year landfill life capacity site. See Exhibit G.
- ENV, on November 20, 2003, solicited an e-mail or a phone response as to whether the members wished to schedule a meeting to select a single site. See Exhibit H.
- At the Committee's November 21, 2003 meeting, a motion was made, a member left and later voted by e-mail, breaking a 5 to 5 tie.

- Mr. Apo's request that information be included in the minutes was refused, on the basis that "Group Memories could only be changed by consensus of the Committee." Mr. Apo indicates he believes this refusal is contrary to section 92-9(a)(4), HRS.
- Group Memories were not reviewed or approved by the Committee.[4]

Mr. Apo alleges that it was necessary to obtain the written signatures (see Exhibits D and E) to ensure that the Committee had the necessary information and record before it made its final decision and recommendation. Mr. Apo also advises that he did not seek, nor did he intend, that the Committee's decision be determined by the signatures. Mr. Apo acknowledges that he had discussions with various individual members concerning the Order, removal of Waimanalo Gulch from the list of potential sites, and the recommendation of a single proposed landfill site. Mr. Apo advises that he does not believe that the discussions outside of Committee meetings violated the Sunshine Law, and that he does not believe that the Committee is subject to the Sunshine Law.

DISCUSSION

I. THE COMMITTEE IS A "BOARD" AS DEFINED BY THE SUNSHINE LAW

The Sunshine Law governs State and county "boards" which are required to hold meetings and take official action. Haw. Rev. Stat. § 92-21 (1993). As noted above, the Corporation Counsel has determined that the Committee is a "board" for purposes of the Sunshine Law and, therefore, is subject to the statute's requirements. Given that the Committee is established by the City and the statute's express policy that public policy be conducted as openly as possible, the OIP defers to the Corporation Counsel's opinion and concurs that the Committee is a "board" as defined by the Sunshine Law.[5]

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[4] The OIP has previously noted that the Sunshine Law contains no requirement that minutes be board-approved. OIP Op. Ltr. No. 02-06 at 7 (Aug. 23, 2002).

[5] A "board" is "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." Haw. Rev. Stat. § 92-2(1) (1993). Mr. Apo advises that he believes that the Committee is not subject to the Sunshine Law because it is not created by constitution, statute, rule or executive order. The City's position is that the Committee was created

II. SUNSHINE LAW VIOLATIONS

The Sunshine Law requires that it be interpreted in accordance with its policy and intent set out at section 92-1, HRS. That policy is to ensure that the people have the right to participate in the formation and conduct of public policy, thus protecting the people's decision-making powers.[6] See Haw. Rev. Stat. § 92-1 (1993).

A. Communications Among Board Members Outside of a Duly Noticed Meeting

The OIP first addresses the question of whether Mr. Apo's discussions with Committee members outside of noticed meetings were authorized by the Sunshine Law. Under the Sunshine Law, a member of a board is prohibited from discussing Official Business[7] with other board members outside of a duly noticed meeting, with certain exceptions as set out in the statute.

In this case, Mr. Apo acknowledges discussions with Committee members outside of a Committee meeting. Although he contends that no vote or commitment to vote was sought, Mr. Apo also acknowledges that he sought signatures on documents concerning Official Business. The ENV letter tasked the Committee to select one or more landfill sites to recommend to the City Council. The subject matter of the documents on which Mr. Apo solicited signatures relates directly to the Committee's Official Business, the selection of landfill sites.

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pursuant to section 4-103 of the Revised Charter of the City and County of Honolulu 1973 (2000 Ed.) as an advisory committee for the Department of Environmental Services. The OIP concurs with the City that, so long as a board is created pursuant to such authority, it is subject to the Sunshine Act.

[6] The OIP notes that the subject matter before the Committee, i.e., the selection of a landfill site, appears to be precisely the type of broad policy decision affecting numerous people that the Legislature intended to be discussed, deliberated and decided in public. The statements and actions of certain Committee members as reported by the media appear to generally reflect the community's lack of consensus on the issue of the site for Oahu's future landfill and therefore highlight the need for the public to be able to scrutinize and participate in the Committee's work.

[7] References to "Official Business" are to "matter[s] over which . . . [a] board has supervision, control, jurisdiction, or advisory power." Such matters are those that are before a board or are reasonably expected to come before a board.

The Sunshine Law contains a number of permitted interactions, authorizing board members to conduct board business outside of duly noticed meetings, so long as certain procedural requirements are followed. Mr. Apo advises that he believes that he was authorized by section 92-2.5, HRS, to gather information regarding the position of Committee members. Section 92-2.5(a), HRS, authorizes two or more members to interact privately between themselves to gather information about Official Business, so long as they do not make or seek a commitment to vote. Section 92-5(b), HRS, also reiterates that permitted interactions cannot be used to make a decision or to deliberate toward a decision upon Official Business. Neither Mr. Apo, Representative Thielen, or the City has invoked an exception to section 92-3, HRS, which would allow the Committee to meet outside of a public meeting.[8] Mr. Apo contends that the signatures on Exhibits D and E do not represent "votes" of the Committee members. Rather, Mr. Apo states that the signatures "were an opportunity for committee members to record and inform other members of their position on certain matters." First, contrary to Mr. Apo's characterization of Exhibits D and E, the OIP finds that the documents relate to Official Business of the Committee and represent the decision of those Committee members who signed the documents. The OIP's conclusion is buttressed by the fact that Mr. Apo acknowledges that, at the November 21 meeting, he sought to have the Committee vote on the identical issues reflected in Exhibits D and E. While the action reflected in Exhibits D and E may not have been "official" until voted on at the meeting, through Mr. Apo's interactions with other Committee members to obtain the signatures on Exhibits D and E, those Committee members who signed the documents had clearly deliberated and decided those issues outside of the meeting.

Second, Mr. Apo's own characterization of the intent of Exhibits D and E compels the conclusion that his interaction with the other Committee members was contrary to the Sunshine Law. As noted above, the Legislature's intent in enacting the statute was to ensure that the formation and conduct of public policy, i.e., discussions, deliberations, decisions and actions, are conducted openly. The Sunshine Law requires that Committee members discuss Official Business in a meeting, not through position statements circulated outside of a meeting. Stated differently, the forum for "committee members to record and inform other members of their position on

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[8] "Every meeting of all boards shall be open to the public and all persons shall be permitted to attend any meeting unless otherwise provided in the constitution or as closed pursuant to sections 92-4 and 92-5[.]" Haw. Rev. Stat. § 92-3 (1993).

certain matters" is at a properly noticed meeting, not through documents such as Exhibits D and E.

Based on Mr. Apo's statements and the documents provided, the OIP concludes that section 92-2.5, HRS, does not authorize either the discussions or the obtaining of signatures on the documents. The OIP concludes that the obtaining of signatures on Exhibits D and E represented seeking, and in the case of Exhibit D, making a commitment to vote as urged by Mr. Apo. In effect, at least nine Committee members conducted board business in a manner that resulted in a meeting closed to the public and thus violated the Sunshine Law.[9]

B. Serial Communications

Moreover, the OIP believes that back-to-back meetings by one member of a board with other members of a board, with the same topic of Official Business discussed at each meeting, violate the Sunshine Law, even if no commitment to vote is made or sought. Such maneuvering to avoid the Sunshine Law's clear intent, which is that the discussions, deliberations, decisions and action of governmental agencies be conducted as openly as possible, violates, at a minimum, the spirit of the Sunshine Law. See Haw. Rev. Stat. § 92-1 (1993). Accordingly, even assuming that, as Mr. Apo suggests, section 92-2.5(a), HRS, allowed him to discuss Exhibits D and E with other Committee members, the statute would not permit him to discuss Exhibits D and E with more than one other Committee member through a series of one-on-one meetings.

C. E-Mail Communications

1. Voting by e-mail

According to Exhibit G, received by the OIP from Mr. Apo, the Committee voted on a matter concerning Official Business via e-mail. Thus, the OIP addresses the issue of voting via e-mail. The Sunshine Law contains no express provision regarding voting by e-mail. The OIP has recognized "that e-mail use, both by the public and governmental agencies, is

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[9] The OIP is aware that Mr. Apo's position is that he solicited the signatures so as to make the majority of the members' position a part of the record. Based on Mr. Apo's statement that minutes could only be changed by group consensus, the OIP believes that Mr. Apo's Sunshine Law violations were inadvertent.

widespread and has become an acceptable method of communication for governmental agencies." OIP Op. Ltr. No. 03-06 at 4 (May 2, 2003). It is axiomatic that the Sunshine Law requires that its open meeting requirements be construed liberally. Haw. Rev. Stat. § 92-1(2) (1993). Section 92-5(b), HRS, states that electronic communications cannot be used to circumvent the spirit or requirements of the Sunshine Law or to make a decision upon a matter concerning Official Business. Haw. Rev. Stat. § 92-5(b) (Supp. 2003). This means that Committee members cannot vote on a matter concerning Official Business via e-mail. Otherwise, the policy of conducting public policy in the open is thwarted. Exhibit G concerns an e-mail from the ENV to Committee members, asking their preference for a minimum ten or 15 year landfill capacity site. According to the ENV's July 3, 2003 letter establishing the Committee, the advisory group is to "help the City establish site selection criteria." Therefore, the OIP concludes that the issue of landfill capacity duration, a criteria for site selection, concerns Official Business. The Committee's October 24, 2003 minutes indicate that nine Committee members replied to the e-mail, expressing a preference for a minimum ten year site. The OIP therefore finds that the e-mail communications regarding landfill capacity duration violated the Sunshine Law.

2. Addressing routine administrative matters by e-mail

According to Exhibit H, received by the OIP from Mr. Apo, the ENV sent a November 20, 2003 e-mail to Committee members asking that they e-mail or phone the ENV concerning proceeding to "schedule another meeting for next week to select a single site or do you wish to have five recommended sites go forward?" The OIP believes that using e-mail to for routine, administrative matters such as scheduling purposes may be permissible under the Sunshine Law. However, in this case it is not clear whether the November 20, 2003 e-mail merely deals with scheduling or is more substantive in that it may change a matter already determined by the Committee at a previous meeting.[10] The following is from the minutes of November 21, 2003, the day after the e-mail concerning scheduling:

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[10] A board is not authorized to add an item to its agenda if it is of reasonably major importance and will affect a significant number of persons. Haw. Rev. Stat. § 92-7(d) (Supp. 2003). If that is not the case, a board may amend an agenda by a two-thirds recorded vote of all members to which the board is entitled. The agenda for the November 21, 2003 meeting is a single item, "Finalizing Draft Report." All boards subject to the Sunshine Law are required to file, with their notice, an agenda listing "all of the items to be considered at the forthcoming meeting[.]" Haw. Rev.

> The Committee next took up the issues of whether to add to the agenda a discussion on reducing the number of proposed sites from 5 to 1. It was noted that under Sunshine such a move would take a vote by 2/3 of the members that the Committee was (sic) entitled to. The motion to place the issue on the agenda failed.
>
> The Committee next discussed whether or not to schedule another meeting and if such a meeting were scheduled what the agenda for the meeting would be. An informal poll of the entire Committee had been taken via email as a member of the report drafting subcommittee stated their intent to push for a vote for one site in the last five minutes of the final drafting meeting. A deadline of close of business November 20 was set for registering your view. At the deadline there is 6 in favor of a meeting, one abstention and 7 opposed. On the morning of this meeting Wilma received an email from one member to change his view from opposed to favor.

From the above excerpt, it appears as though the e-mail was in fact a vote to reconsider an earlier Committee decision. If that is the case, then the November 20,2003 correspondence via e-mail would be the sort of e-mail correspondence that is not permissible under the Sunshine Law.

D. Minutes Must Include Any Information Any Board Member Requests be Included or Reflected in the Minutes

The Sunshine Law requires that minutes contain, *inter alia*, the substance of all matters proposed, discussed or decided, a record by

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Stat. § 92-7(a) (Supp. 2003). The purpose of listing the items to be considered by the board is to provide sufficient information to the public about the business that the board intends to conduct so that the public can determine whether to participate in the meeting. As the motion to amend the agenda failed, the OIP need not address either the adequacy of the listed agenda item or the issue of whether the proposed amendment was of reasonably major importance and would affect a significant number of persons. Nevertheless, based on the November 21, 2003 Committee minutes, the OIP notes that boards are required to ensure: (1) that their agendas give reasonably specific descriptions of what the board intends to consider; (2) that agendas are not amended when the board is considering adding an item of reasonably major importance that will affect a significant number of persons.

individual member of votes taken, and any information any board member asks be included. Haw. Rev. Stat. § 92-9(a) (1993). Mr. Apo has advised the OIP that the Committee minutes reflect the view of members who opposed the inclusion of Waimanalo Gulch. The Sunshine Law requires that minutes include: "[a]ny other information that any member of the board requests be included or reflected in the minutes." Haw. Rev. Stat. § 92-9(a)(4) (1993). Thus, if a Committee member specifically asked that the member's views concerning the exclusion of Waimanalo Gulch as a landfill site be included in the minutes, the individual responsible for recording the minutes was required to include that information. Nevertheless, the Committee's minutes[11] do reflect at least some discussion of this issue. In the OIP Opinion Letter Number 03-13, the OIP addressed the issue of what need be contained in minutes so that they reflect "[t]he substance of all matters proposed, discussed, or decided," as required by section 92-9(a)(3), HRS. There, the OIP concluded that "the primary purpose for keeping minutes is to

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[11] The Committee's minutes contain the following discussions on the issue of the number of sites to be selected by the Committee:

> There was also discussion about the LUC special use permit which stated that the Blue Ribbon Committee should pick one site. Wilma explained that the City was in the process of requesting an amendment to the permit as the City has consistently asked this committee to recommend 3 – 5 sites for study in the EIS process which would determine the preferred site. There was disagreement around the table that the EIS would do this as the committee felt that most EIS documents they were familiar with included a preferred site at the beginning of the process. The committee will select 3 to 5 sites and if the amendment to the LUC is not successful then the committee will be reconvened to choose the preferred site.

Committee minutes dated October 3, 2003 (the OIP believes these minutes reflect a meeting held on October 10, 2003, as the minutes directly preceding, located at www.opala.org, are dated October 3, 2003 and reflect that the next meeting is scheduled for October 10, 2003).

> The committee noted a lack of clarity on the part of the City as to whether Waimanalo Gulch is on the table. Members noted the LUC hearing where the five year extension approval was predicated on the City closing the Gulch site. Even though the City has talked about filing a request to amend this decision those present at the hearing felt that based on the testimony this is not an option. They also site (sic) statements from both the Mayor and Frank Doyle to the effect that the Gulch would be closed. Others noted that it would be irresponsible to throw it out as there is significant capacity remaining, is owned by the City, and is already a landfill.
>
> There is still concern about recommending 3 to 5 sites as the LUC order asks the committee for one and it has not been amended.

Committee minutes dated October 24, 2003.

reflect what the board did." Based on the minutes reviewed by the OIP, in this instance, the OIP finds no violation of the Sunshine Law with respect to the minutes reflecting the substance of all matters proposed, discussed or decided concerning making a site selection of more than one site. In spite of that, the OIP believes that, if any Committee member specifically asked that his or her views or information concerning any matter of Official Business be included in the minutes, the Sunshine Law requires that the minutes include such views or information.

CONCLUSION

To summarize, the OIP concludes that, at a minimum, the Sunshine Law was violated by (1) Mr. Apo's discussions with Committee members and obtaining of signatures from Committee members outside of a duly noticed meeting or permitted interaction; and (2) the e-mail communications regarding landfill capacity duration. Accordingly, the OIP recommends the following concerning the actions taken at the Committee's December 1, 2003 meeting.[12]

Given the violations of the Sunshine Law described above, the OIP has no alternative but to advise that any action taken by the Committee described herein as being contrary to the statute should be voided and the Committee be reconvened for reconsideration of its decisions made on December 1, 2003 as well as the decision regarding landfill capacity duration, as it appears as though substantive decisions on both issues were made outside of a meeting open to the public. The OIP also recommends that, when a board or committee subject to the Sunshine Law is newly established, the members be given an overview of the Sunshine Law at or prior to the first officially convened meeting. The OIP routinely trains agencies on the Sunshine Law, and on the Uniform Information Practices Act (Modified), chapter 92F, HRS, our "public records" law.

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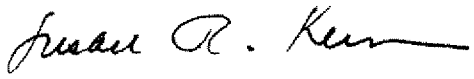
[12] The minutes of the December 1, 2003 meeting (Exhibit C) indicate that the Committee's practice was to make its decisions by consensus. Section 92-15, HRS, requires that "a majority vote is required to make a board action legally valid." Cariaga v. Del Monte, 65 Haw. 404, 410, 652 P.2d 1143 (1982). The OIP has jurisdiction only over part I of chapter 92, HRS, and section 92-15, HRS, is contained in part II of chapter 92. Therefore, the OIP suggests that boards consult with their assigned deputy Corporation Counsel or Attorney General before proceeding with a consensus requirement to make board action legally binding, unless the statute, ordinance or other enabling vehicle expressly authorizes a unanimity requirement.

The OIP also advises Representative Thielen that section 92-11, HRS, authorizes a lawsuit to void any final action taken in violation of section 92-3, HRS. Such a lawsuit must be commenced within 90 days of the board action. Moreover, section 92-12, HRS, authorizes any person to file a lawsuit for the purpose of requiring compliance with the Sunshine Law, with reasonable attorney fees and costs to be awarded to the prevailing party in such suit.

Very truly yours,



Susan R. Kern
Staff Attorney

APPROVED:

Leslie H. Kondo
Director

cc: The Honorable Donovan M. Dela Cruz, Council Chair, City and County of Honolulu (w/encs.)
The Honorable David Arakawa, Corporation Counsel, City and County of Honolulu (w/encs.)
The Honorable Frank Doyle, Director, Department of Environmental Services, City and County of Honolulu (w/encs.)

SRK: ankd

Enclosures