

The Sunshine Law



Hawaii's Open Meetings Law
Part I of Chapter 92, HRS

Ethics and Government Openness

- HRPC 1.6(c): PUBLIC GOOD tempers a government attorney's duty of CONFIDENTIALITY



Public Good per Sunshine Law

“[I]t is the policy of this State that the formation and conduct of public policy -- the discussions, deliberations, decisions and actions of government agencies -- shall be conducted as openly as possible.”

Duty to Public/ Purpose of Law

Government **attorney** owes duty to whom when giving Sunshine Law advice?

- Government **client** has fiduciary duty to public
- Public purpose of Sunshine Law

What's the purpose?

- Protect public's right to know
- Open governmental process to public scrutiny and public participation



Access to Justice: Sunshine Law Disputes

- The more familiar board members are with the Sunshine Law, the fewer the disputes
- The better advised board members are, the fewer the disputes
 - Advice from OIP
 - Advice from board's counsel

Sunshine Law requires:

- Discussions, deliberations and decisions must be conducted at a meeting
- Every meeting must be open unless executive meeting is allowed
- Boards must accept testimony
- Boards must provide notice
- Boards must keep minutes



“Board Business”

- Matters over which the board has supervision, control, jurisdiction or advisory power that are before the board or reasonably anticipated to come before the board in the foreseeable future



“Board Business”

- Within the board’s authority
- On current or future agenda



- No caucuses
- No polling
- No telephone discussions
- No e-mails
- No memos



Permitted Interactions

- 2 members
- Investigate
- Present, discuss or negotiate
- Selection of officers
- Governor
- Department head



Permitted Interactions - 2 Members

- Communicate privately
- Cannot commit to vote
- Cannot seek commitment
- Cannot use serially



Permitted Interactions - Investigations



- Less than a quorum
- Scope of investigation defined at a meeting
- Findings and recommendations presented at a 2nd meeting
- Deliberation and decision-making at a 3rd meeting

Examples of “Investigation” Permitted Interactions

- Confidential interviews
- Site inspections and product demonstrations
- Receipt and consideration of confidential information



Access to Justice: ‘All persons’

- General rule is “all persons” can attend board’s meeting
 - Identity doesn’t matter
 - Residence doesn’t matter
 - Removal allowed only when “wilfully disrupts a meeting”

Executive Meetings



- Closed to public
- 2/3 vote of board members present
- Announce reasons for closed meeting
- Vote recorded and entered into minutes

Executive Meeting Purposes



- professional or vocational license applicants
- personnel matters
- authority of labor negotiator or person designated to negotiate purchase of land
- legal matters with board's attorney
- criminal misconduct
- sensitive matters relating to public safety
- private donations and
- matters confidential by law or court order

Limited Meetings

- Dangerous location OR public attendance impracticable
- OIP concurrence
- 2/3 Vote
- Show video next time
- No decisions made



Videoconference Meetings



- Audio and visual interaction at all locations
- Notice where board members will be
- Public can attend at any location
- Meeting ends if audio interaction not maintained at all locations

Testimony

- All interested persons may submit written testimony on any agenda item.
- All interested persons may present oral testimony on any agenda item.



Access to Justice: "All interested persons"

- Testimony from "all interested persons"
 - Identity doesn't matter
 - Reason for testifying doesn't matter
 - Residence doesn't matter



Notice Requirements

- written notice
- date, time and place
- includes agenda
- for executive meeting, must state purpose and cite statutory basis



- Filed with the Lieutenant Governor's office and at the board's office (posted at meeting site when feasible)
- 6 calendar days prior to meeting
- Copy mailed to anyone so requesting

Meeting Agenda

- All items that the board intends to consider
- To inform the public of the matters the board intends to consider so that the public can decide whether to participate in the meeting



Amending the Agenda

- Only with 2/3 vote of all members
- Cannot add item if:
 - of reasonably major importance, and
 - will affect a significant number of people



Emergency Meetings

- imminent peril to public health, safety and welfare, or
- unanticipated event
- requires meeting in less than 6 calendar days



Minutes

- Written minutes required
- True reflection of matters discussed and views of participants
- Date, time and place
- Members present/absent
- Substance of all matters proposed, discussed or decided
- Record, by member, of votes
- Other information that a member requests be included



Minutes, continued...

- Public within 30 calendar days



- Executive meeting minutes may be withheld for so long as publication would defeat lawful purpose of meeting

Access to Justice: OIP as ADR

- Member of public can go straight to court to challenge a Sunshine Law violation, **OR**
- The member of the public can request an investigation and opinion from OIP instead

Access to Justice: OIP as ADR

- OIP uses an informal process to decide Sunshine Law disputes, not a contested case:
 - Complainant cannot obtain remedies such as voiding or injunction
 - But, has no need to obtain counsel to pursue complaint

Access to Justice: Precluding Disputes

- Agencies and public can obtain advisory opinions from OIP to preclude future disputes
- Agencies and public obtain same-day informal advice for upcoming or ongoing meetings as well as general questions through OIP's Attorney of the Day
- OIP's training for agencies is another preventative measure
