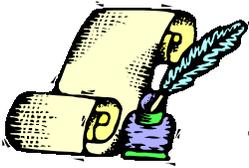


Summaries of Recent OIP Opinion Letters

Availability of Minutes of Open Meetings

The OIP Opinion Letter Number 02-06 discusses a board's discretion, under the UIPA and the Sunshine Law, to withhold tapes, transcripts, notes, and minutes of meetings open to the public.



The OIP opined that audiotape recordings made by boards of meetings open to the public are public records. Likewise, when a full transcript is made of a meeting, that transcript is a public record.

Notes taken by an individual assigned to record the minutes of a meeting are public records, but while in the editorial process these notes may be withheld until put in a form suitable for submission to a board.

Once they are in a form suitable for submission, however, these draft minutes are public records, inasmuch as they reflect events that took place in full view of the public at the open meeting and are essentially a summary of those events, even though unapproved by a board and considered to be "draft."



Approval of minutes of open meetings must take place at open meetings, as approval of minutes is not listed in the Sunshine Law as a purpose for which a board is authorized to hold a meeting closed

to the public, or as an activity which a board is authorized to conduct outside of a meeting open to the public.

The OIP noted that there is no requirement in the Sunshine Law that a board approve minutes, and therefore boards do not have discretion to withhold minutes from the public based on whether or not the minutes have been approved by a board. Although boards may elect to formally approve minutes, if minutes have not been approved by 30 days after the date of the meeting, minutes, in some form, must be made available to the public.

The OIP therefore encourages boards that wish to formally approve minutes to do so within 30 days of the

date of the meeting. This will ensure that the public has access to minutes that have been reviewed for accuracy and completeness. The OIP also suggests that, when disclosing unapproved minutes, the board stamp or mark the minutes "DRAFT" so that the public is on notice that the minutes may be corrected or amended at a later date. [OIP Op. Ltr. 02-06, August 23, 2002]



PEG Access Organizations 'Olelo and Ho'ike Subject to UIPA

The Community Television Producers Association and The League of Women Voters of Kauai asked the OIP to determine whether 'Olelo: The Corporation for
See Opinions, p. 2

Where to Find Opinion Letters

The OIP's formal opinion letters are online at the Hawaii State Bar Association's web site. You can link through the OIP's site, www.state.hi.us/oip, or go directly to hsba.hostme.com/Info/infoindex.htm.



On the HSBA site the opinion letters are organized numerically, back to 89-01, the OIP's first opinion letter, dated September 11, 1989, regarding workers' compensation notices of insurance.

In the 13 years from 1989 through the end of August 2002, the OIP has issued a total of 239 opinion letters. This is in addition to the many other services that the office offers.

Formal opinion letters are also available in the UIPA Reference Manual (volumes II through VI). Copies of individual letters may be requested by contacting the OIP: call 808-586-1400 or send e-mail requests to oip@state.hi.us.



Opinions (from p. 1)

Community Television (“‘Olelo”) and Ho’ike: Kauai Community Television, Inc. (“Ho’ike”) were subject to the requirements of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes (“UIPA”).



Under a four-part test, the OIP found that ‘Olelo and Ho’ike are corporations owned, operated, or managed by or on behalf of this State as set forth under section 92F-3, Hawaii Revised Statutes, and are, therefore, required to follow the UIPA.

The facts show that both ‘Olelo and Ho’ike were originally created by the DCCA, notwithstanding their current corporate form, and are funded almost entirely through funds allocated pursuant to the Director’s authority under the Hawaii Cable Communications Systems Law, chapter 440G, Hawaii Revised Statutes (“HCCSL”).

Although the DCCA has not exercised close control over the administration of the PEG access channels, the DCCA does have significant and direct control over ‘Olelo and Ho’ike through



its power to appoint and remove the majority of appointees on the boards of those corporations.

Moreover, the DCCA exercises indirect control over the existence of ‘Olelo and Ho’ike

through the contractual agreements that designate both as the Director’s designee, and terminate their corporate existence when that designee status ends.

The HCCSL, together with the DCCA’s contracts with ‘Olelo and Ho’ike, set forth a clear State policy to have the DCCA administer cable channels for use by the public and for educational and governmental users.

The OIP concluded that the provision for, and administration of, such PEG access channels by the DCCA is a government function. ‘Olelo and Ho’ike, on behalf of the DCCA and as the Director’s designees, are required to provide this government function to the public as well as to governmental and educational users.

Finally, the DCCA has used its power to require that the cable franchisee pay money to the PEG Access Organizations and others to support the PEG access channels.

Given the financing arrangements between the DCCA, the cable franchisee, and the Public Access Organizations, and the federal case law treating similar funding arrangements as public funding, the OIP found that these m o n i e s

paid to ‘Olelo and Ho’ike are p u b l i c funding.

As a matter of public policy, the Legislature declared that the formation and

conduct of public policy — the discussions, deliberations, decisions, and actions of government agencies — be conducted as openly as possible. Haw. Rev. Stat. § 92F-2 (1993).

The OIP is required to construe the UIPA to promote the chapter’s purposes and policies, which include enhancing governmental accountability through access to government records.

Therefore, because ‘Olelo and Ho’ike are owned, operated, or managed on behalf of this State, their records are also subject to this policy as set forth in the UIPA.

When the records of ‘Olelo and Ho’ike are accessible to the public, government can be held accountable for its actions, even when government’s actions are carried out by separate entities. [OIP Op. Ltr. 02-08, September 6, 2002] 

“When the records of ‘Olelo and Ho’ike are accessible to the public, government can be held accountable for its actions, even when government’s actions are carried out by separate entities.”

Openline is a monthly publication of the Office of Information Practices, State of Hawaii.

Director: Moya T. Davenport Gray
 Editor: Michael V. Little
 Address: No. 1 Capitol District Building
 250 S. Hotel St., Suite 107
 Honolulu, Hawaii 96813

Phone: (808) 586-1400
 Internet: www.state.hi.us/oip



Fax: (808) 586-1412
 email: oip@state.hi.us