



NEIL ABERCROMBIE
GOVERNOR

BRIAN SCHATZ
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES

NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAII 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oiip@hawaii.gov
www.hawaii.gov/oiip

CATHY L. TAKASE
ACTING DIRECTOR

The Office of Information Practices (OIP) is authorized to issue this advisory opinion concerning compliance with part I of chapter 92, Hawaii Revised Statutes (HRS) (the Sunshine Law) pursuant to HRS § 92F-42(18).

MEMORANDUM OPINION

Requester: Mr. Jeff Garland
Board: Honolulu City Council
Date: February 15, 2011
Subject: Amendment of Agenda (S RFO-P 08-5)

Request for Opinion

Requester seeks an advisory opinion on whether the Honolulu City Council violated the Sunshine Law by amending the agenda of its Executive Matters Committee meeting held on May 16, 2007 to consider Resolution 07-168. Unless otherwise indicated, this advisory opinion is based solely upon the facts presented in e-mails sent by Requester to OIP dated September 10 and 16, 2007 with attachments.

Opinion

OIP finds that the Council's agenda amendment did not violate the Sunshine Law.

Statement of Reasons for Opinion

The Sunshine provides that a filed agenda may be amended to add an item by 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." HRS § 92-7(d). Determination of whether an item "is of reasonably major importance" and when board action thereon will "affect a significant number of persons" is fact-specific and must be made on a case-by-case basis.

Resolution 07-168 authorized the Council Chair to enter into an agreement with Olelo Community Television (“Olelo”) relating to the televised broadcast of Council meetings, hearings and other activities in substantially the same form as the exhibit attached to the resolution. The Chair was further authorized to amend the agreement as necessary, including amendment of the “distribution” to be made by Olelo to the City under the contract.

Under the contract, the Council agrees to provide produced programming covering its meeting and other events in exchange for a distribution from Olelo of a specified amount from the cable fees Olelo receives. The draft contract attached to Resolution 07-168 sets the distribution amount at \$44,000, which could be provided by agreement in equipment and services.

Based upon the minutes for the May 16 meeting, we understand that the authority to amend granted the Chair was to allow the Chair to negotiate a more beneficial reimbursement from Olelo, which the contract would be amended to reflect. Further, the May 15, 2007 letter from the Council Chair to Olelo, reflects the Chair’s attempt to obtain a higher distribution amount. In that letter, the Chair suggests an amount that would more closely reflect the City’s rising broadcasting costs and Olelo’s rising franchise fees received from cable customers, and suggests that such an amount would be closer to \$87,000.

The authority given to the Chair under Resolution 07-168, thus, was to try to obtain a larger distribution from Olelo under a contract in which Olelo was paying the City \$44,000 for programming. Under these circumstances, the contract amount being paid the City and the latitude being afforded the Chair was relatively small. We thus find that amendment of the agenda to add this item to enter into and negotiate any additional distribution was not of reasonably major importance and that action on that item would not affect a significant number of persons.

Requester’s arguments regarding the significance of this agenda item appear to relate to his objections concerning the fact that the City agreed to accepting in-kind services in lieu of cash that included the archiving of Internet streams of the Council’s meetings, pursuant to an agreement between Olelo and a third party company. Requester’s main points of contention appear to be the City’s decision to archive its meetings,¹ the use of the third party company’s services, and the impact that a greater distribution from Olelo to the City might have on Olelo’s other public

¹ This decision was not the subject of the item proposed to be added to the agenda. Even if it had been, however, it is likely that, absent significant financial ramifications, we would find that the item is not of “reasonably major importance” and could be added to the agenda. The issue of whether and how meetings are publicly broadcast is more an internal or administrative matter in contrast to a specific core matter over which the Council exercises control.

programming producers and thus potentially on its viewers.² Only the last point appears to be related to the agenda item in a larger context, but OIP does not find that the potential effect of a relatively small increase in distribution to the City on other PEG programming would preclude amendment of the agenda under the standard set forth in HRS § 92-7(d). Cf. OIP Op. Ltr. No. 06-05 at 4 (item's importance and the potential consequence of any action taken on it must be viewed relative to the larger context in which it occurs).

Right to Bring Suit to Enforce Sunshine Law and to Void Board Action

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12. The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11. A suit to void any final action must be commenced within ninety days of the action. Id.

OFFICE OF INFORMATION PRACTICES



Cathy L. Takase
Acting Director

² In determining whether action on an issue of “reasonably major importance” will affect a significant number of persons, we look to the Council’s constituency, which is the residents of the City and County of Honolulu, rather than Olelo’s constituency of viewers.