



DAVID Y. IGE
GOVERNOR

**STATE OF HAWAII
OFFICE OF INFORMATION PRACTICES**

CHERYL KAKAZU PARK
DIRECTOR

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.oiip.hawaii.gov

The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR). This is a memorandum opinion and will not be relied upon as precedent by OIP in the issuance of its opinions or decisions but is binding upon the parties involved.

MEMORANDUM OPINION

Requester: Michael Golojuch, Jr.
Board: Makakilo/Kapolei/Honokai Hale Neighborhood Board
Date: April 23, 2018
Subject: Private Conversation Prior to Open Meeting (S APPEAL 15-27)

Request for Investigation

Mr. Michael Golojuch, Jr. (Requester) asked for an investigation into whether the Makakilo/Kapolei/Honokai Hale Neighborhood Board (Board) violated the Sunshine Law when Board allegedly held an improper private conversation regarding an agenda item prior to the start of its meeting held on April 22, 2015 (Meeting).

Unless otherwise indicated, this opinion is based solely upon the facts presented in Requester's complaint to OIP dated May 31, 2015 (Complaint); Board's response to OIP's Notice of Appeal dated October 30, 2015 (Response); Board's agenda dated April 22, 2015 (Agenda); and Board's minutes dated April 22, 2015 (Minutes).

Opinion

Most of the Board members held a private conversation prior to the start of a scheduled meeting, but the conversation was about a purely logistical issue, and thus was not a discussion of board business subject to the Sunshine Law. See HRS § 92-2 (definitions of "chance meeting" and "meeting"); see also OIP Op. Ltr. No. 01-01 at 30-32 (defining "official business").

Statement of Reasons for Opinion

Requester complained that Board's Meeting started "late so that [Chair Evelyn Souza] could talk to the rest of the board about something, which [Requester] was told was regarding an Agenda Item – Bill 3."¹ He further claimed that a video he provided to OIP "will also show there was quorum present during [Chair Souza's] conversation before she started the meeting." This edited video provided by Requester showed a sixteen minute-excerpt of the Meeting. The caption on Requester's video stated, "Chair Souza before the meeting started spoke to every member of the Neighborhood Board about an item on the agenda in direct violation of the Sunshine Law." However, the video itself showed Chair Souza stating, "I apologize for the delay, but we did have to have something discussed." She then called the meeting to order and proceeded with a roll call of the board members. The remaining portion of the video excerpt did not relate to Requester's Complaint.

Chair Souza, on behalf of the Board, responded to Requester's Complaint. No other Board members responded. In Chair Souza's Response, she did not deny holding a private conversation with other Board members regarding an agenda item prior to the start of its Meeting. Rather, Chair Souza asserted, "My failing to start the meeting on time for the reason of discussing subject matter being considered in the meeting agenda, as Mr. Golojuch Jr. writes is equally wrong." She then explained, "I did have something to 'discuss' with others but that discussion [was] not about Bill 3 (as is implied). It was instead, about the presentation of a City Council certificate to Jackie Zahn, the widow of our friend and fellow Neighborhood Board member who had passed."² Chair Souza further explained that she had to talk to other Board members to figure out the logistical arrangements for the award ceremony. She needed to settle who would "do the honors [of providing a lei] and followed [*sic*] with the reading of the City Council certificate" as identified as Item III.a. It is OIP's understanding that Chair Souza did not engage in extensive discussion with other members and that nothing other than logistical arrangements was discussed.

The Sunshine Law requires all board meetings to be open to the public, unless otherwise provided in the Hawaii Constitution or as closed pursuant to sections 92-4 and 92-5, HRS. See HRS § 92-3 (2012). Whenever members of a board subject to the Sunshine Law discuss board business, they must do so either in a meeting, or in one of the permitted interactions set out in section 92-2.5, HRS. See HRS § 92-2

¹ Item III.d. on the Agenda for the Meeting listed, "Discussion and action concerning Board support or non-support of Bill 3 at Honolulu City Council."

² Item III.a. on the Agenda listed, "Certificate of Appreciation awarded posthumously by this grateful Makakilo/Kapolei/Honokai Hale Neighborhood Board No. 34 to Neighborhood Board Commissioner and community advocate Charles 'Charlie' Zahn for outstanding public service rendered to this community and the City and County of Honolulu."

(defining “meeting”) and HRS § 92-2.5. Neither Requester nor Board invoked any permitted interactions under section 92-2.5. HRS. Moreover, none apply to the situation at hand.

Because the conversation at issue here was conducted by board members outside of and prior to the Meeting, OIP must consider whether it concerned board business of the Board. OIP has defined “board business,” or interchangeably “official business,” as “matters over which the board has supervision, control, jurisdiction, or advisory power that are currently before the board or that are reasonably anticipated to come before the board in the foreseeable future for discussion, deliberation, and action.” OIP Op. Ltr. No. 05-15 at 1, n.1; see also OIP Op. Ltr. No. 04-01 at 7, n.7 (defining “official business” as “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.”). OIP has previously noted that purely administrative matters would not be considered “board business.” OIP Op. Ltr. No. 05-02 at 4; see also OIP Op. Ltr. No. 04-01 at 10. Here, OIP finds that the logistical arrangements for the award ceremony were not a matter that the Board, as a board, would be considering or taking action on. Rather, the logistical arrangements were administrative details related to the substantive matter the Board planned to consider, specifically, the proposed award of a Certificate of Appreciation to a deceased Board member. Thus, OIP concludes that the logistical arrangements were not board business. See Id.

Upon review of Board’s Response and Requester’s video, OIP could find no evidence that “Agenda Item – Bill 3” was discussed by the Board. OIP finds that the Board’s conversation regarding logistical arrangements for the award ceremony was administrative in nature, not substantive. Accordingly, OIP concludes that there was no improper discussion, deliberation, or decision making of board business outside of a noticed meeting in violation of the Sunshine Law.

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 (2012). 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 (2012). A suit to void any final action must be commenced within ninety days of the action. Id.


This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint within thirty days of the

date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court's review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES



Liza Onuma Canady
Staff Attorney

APPROVED:



Cheryl Kakazu Park
Director