



DEPARTMENT OF THE CORPORATION COUNSEL
COUNTY OF MAUI
200 SOUTH HIGH STREET
WAILUKU, MAUI, HAWAII 96793
TELEPHONE: (808) 270-7740 FAX (808) 270-7152

October 29, 2002

MEMO TO: Ken R. Fukuoka
Director of Council Services

F R O M: James B. Takayesu
Corporation Counsel

SUBJECT: IMPACTS OF OIP LETTER NO. 01-01 (PAF 01-288)

This memorandum is made in response to your memorandum dated September 21, 2001, in which you requested an opinion on the effects of the Office of Information Practices (OIP) Opinion Letter No. 01-01 dated April 30, 2001. You requested an opinion on the following questions:

1. Council members occasionally serve on committees or other bodies formed by the mayor or executive-branch officials (e.g., the Mayor's Transportation Action Committee). Are such bodies' subject to the Sunshine Law under OIP Opinion Letter No. 01-01?
2. Individual Council members occasionally hold public meetings designed to garner public input relating to particular subjects or particular regions. Are such meetings subject to the Sunshine Law under OIP Opinion Letter No. 01-01?

BRIEF ANSWER:

Our opinions are as follows:

1. Committees or other bodies formed by the mayor or executive-branch officials that are not created by constitution, statute, rule or executive order, are generally not subject to the Sunshine Law, Hawaii Revised Statutes (HRS) Chapter 92; and
2. Individual Councilmembers holding public meetings are generally not subject to the Sunshine Law.

DISCUSSION:

1. **Committees or other bodies formed by the mayor or executive-branch officials are generally not subject to the Sunshine Law, Hawaii Revised Statutes (HRS) Chapter 92.**

HRS § 92-2 provides the following definitions:

§ 92-2. Definitions.

As used in this part:

(1) "Board" means 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.

* * *

(3) "Meeting" means the convening of a board for which a quorum is required in order to make a decision or to deliberate toward a decision upon a matter over which the board has supervision, control, jurisdiction, or advisory power.

(Emphases added). Also, HRS § 92-2.5 provides in relevant part:

§ 92-2.5. Permitted interactions of members.

(a) Two members of a board may communicate or interact privately between themselves to gather information from each other about official board matters to enable them to perform their duties faithfully, as long as no commitment to vote is made or sought.

(b) Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

- (1) Investigate a matter relating to the official business of their board; provided that:
 - (A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

- (B) All resulting findings and recommendations are presented to the board at a meeting of the board; and
 - (C) Deliberation and decision making on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or
- (2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation.

* * *

(f) Communications, interactions, discussions, investigations, and presentations described in this section are not meetings for purposes of this part.

(Emphases added).

Given the foregoing, and consistent with OIP Opinion Letter No. 01-01, we opine that committees or other bodies formed by the mayor or executive-branch officials are not subject to the Sunshine Law, unless such bodies are created pursuant to Charter or ordinance. With respect to the City and County of Honolulu's Vision Teams, the OIP held that such advisory bodies are subject to the requirements of the Sunshine Law because they were created pursuant to the Revised Charter of the City and County of Honolulu. The Revised Charter of the City and County of Honolulu provides:

Section 4-103. Creation of Advisory Committees --

1. The mayor or department heads, with the approval of the mayor, may each appoint advisory committees for departments. Such advisory committees shall not exist beyond the term of office of the appointing authority.

2. The function of all advisory committees shall be limited to counsel and advice. The members of advisory committees shall not be paid, but their authorized expenses shall be paid from appropriations to the appointing authority. Advisory committees shall have no

Ken R. Fukuoka
October 29, 2002
Page 4

employees, but each appointing authority shall cause employees of the department to furnish such services as may be needed by the committees.

Revised Charter of Honolulu (2000). The Maui County Charter does not have a similar provision. Accordingly, advisory committees or other ad hoc groups formed by the mayor or executive-branch officials are not "official" bodies subject to the Sunshine Law because they do not meet the definition of "board" as set forth in HRS § 92-2.

However, we do note that if more than one member of the Council is a member of such an advisory body, and if the subject matter of that advisory body is within the Council's supervision, control, jurisdiction, or advisory power, the Council should, by resolution or motion, at a Council or committee meeting, assign one or more of its members to investigate a matter, or to present a position in accordance with HRS §92-2.5(b).

2. Individual Councilmembers holding public meetings are generally not subject to the Sunshine Law.

When a Councilmember meets with the public for input on a particular issue, the meeting is not subject to the provisions of the Sunshine Law. However, if the meeting involves more than one Councilmember (for example, the Councilmember of the district and the Chair of a particular Council committee), and the purpose of such meeting is of an investigative nature, it is advisable to comply with the requirements of HRS §92-2.5(b)(1).

Please contact me if you have any questions or concerns.