

Op. Ltr. 94-24 Na Leo O Hawaii Not an Agency
This opinion was overruled by OIP Op. Ltr. 02-08.

December 13, 1994

Mr. Juergen Denecke
General Manager
Na Leo 'O Hawai'i, Inc.
68 Kekuanaoa Street, Suite 350
Hilo, Hawaii 96720

Dear Mr. Denecke:

Re: Na Leo 'O Hawai'i, Inc.

This is in response to your letter dated November 21, 1994 to the Office of Information Practices ("OIP") requesting an advisory opinion concerning whether Na Leo 'O Hawai'i, Inc. ("Na Leo") is an "agency" subject to the provisions of the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA").

Na Leo is a private non-profit corporation which provides community television broadcasting on the island of Hawai'i. Under the UIPA, the term "agency" includes "any corporation or other establishment owned, operated, or managed by or on behalf of this State or any county." Haw. Rev. Stat. § 92F-3 (Supp. 1992).¹

In a previous OIP advisory opinion, we concluded that Akaku - Maui Community Television, Inc. ("Akaku") is not "owned, operated, or managed" by or on behalf of the Department of Commerce and Consumer Affairs ("DCCA") or any State or county agency. See OIP Op. Ltr. No. 93-18 (Oct. 20, 1993). In that opinion we found that Akaku is a non-profit community television

¹The UIPA provides that "[a]ll government records are open to public inspection unless access is restricted or closed by law." Haw. Rev. Stat. § 92F-11(a) (Supp. 1992). The term "government record" is defined in section 92F-3, Hawaii Revised Statutes, as "information maintained by an agency in written, auditory, visual, electronic, or other physical form." [Emphasis added.]

broadcasting company that initially received the DCCA's assistance in establishing operations, but that the DCCA no longer is involved with any of Akaku's activities or operations.

In addition, we found that Akaku does not perform a governmental function (although we believe that it is performing a service that benefits the public interest). Consequently, based upon these factors, we concluded that Akaku is not an "agency" as that term is defined in section 92F-3, Hawaii Revised Statutes.

In OIP Opinion Letter No. 94-23 (December 13, 1994), we also found that Ho'ike: Kaua'i Community Television, Inc., which is an independent non-profit corporation providing community television broadcasting for the island of Kaua'i, is not an "agency" subject to the provisions of the UIPA.

Similarly, the DCCA's Cable TV Division has informed the OIP that Na Leo, a private, non-profit corporation which provides community broadcasting on the island of Hawai'i, does not receive any financial or other assistance from State or county government. Nor is there any government involvement in or control over Na Leo's activities and operations. In addition, because providing "community" broadcasting is not a required function of any government agency, we do not believe that Na Leo performs a governmental function. Accordingly, in our opinion, Na Leo is not an "agency" as that term is defined in section 92F-3, Hawaii Revised Statutes, and therefore, is not subject to the provisions of the UIPA.

Very truly yours,

Stella M. Lee
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

SML:sc

c: Sanford Inouye, Esq.
DCCA, Cable TV Division

John Anderson
Deputy Attorney General