

June 8, 1994

Mr. John Rybczyk
Administrator
Liquor Commission
City and County of Honolulu
711 Kapiolani Boulevard, Suite 600
Honolulu, Hawaii 96813

Dear Mr. Rybczyk:

Re: Petition Submitted to the Liquor Commission Protesting
the Issuance of a Liquor License

This is in reply to your letter to the Office of Information Practices ("OIP") requesting an advisory opinion concerning the above-referenced matter.

ISSUE PRESENTED

Whether, under the Uniform Information Practices Act (Modified), chapter 92F, Hawaii Revised Statutes ("UIPA"), a petition submitted to the Honolulu Liquor Commission protesting the issuance of a license must be made available for public inspection and copying.

BRIEF ANSWER

Under the UIPA, "[a]ny provision to the contrary notwithstanding," each agency must make available for public inspection and copying, "[g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." Haw. Rev. Stat. §92F-12(b)(2) (Supp. 1992).

Under section 281-14, Hawaii Revised Statutes, the Honolulu Liquor Commission ("Commission") must make available for public inspection and copying records of all Commission "meetings, proceedings, and acts with reference to all business pertaining to licenses issued, suspended, and revoked . . . [u]nless

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otherwise prohibited by law." In our opinion, applying the plain meaning of this phrase, this statute only requires the public availability of records of Commission meetings, proceedings, and acts with reference to licenses issued, suspended, or revoked, and does not expressly authorize the disclosure of other records of the Commission. Because the petition submitted to the Commission in the facts presented did not involve a Commission meeting that resulted in the issuance of a license, it is our opinion that this statute is inapplicable.

However, applying the UIPA's general rule that all government records are public unless access is closed or restricted by law, we conclude that a petition submitted to the Commission protesting the issuance of a license must be made available for public inspection once received by the Commission.

Based upon court decisions under the open records laws of other states, and based upon the strong public interest in the disclosure of the petition, we conclude that this government record would not be protected by the UIPA's personal privacy exception set forth in section 92F-13(1), Hawaii Revised Statutes.

Further, we find that none of the other UIPA exceptions to required agency disclosure would apply to the petition. Therefore, it is our opinion that the Commission should make the petition protesting the issuance of a license available for public inspection and copying once the petition is received by the Commission.

FACTS

The Liquor Commission, City and County of Honolulu ("Commission"), held a public hearing upon an application by Music Link, Inc. for a liquor license for business premises located on University Avenue, near the Varsity Theater. Section 281-57, Hawaii Revised Statutes, provides in pertinent part:

Immediately upon the commission's fixing a day for the public hearing of the application, the applicant shall mail a notice setting forth the time and place of the hearing on the application, to not less than two-thirds of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment or to those individuals on the list of owners as provided by the managing agent or governing body of the shareholders association situated within a distance of five hundred feet from the

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nearest point of the premises for which the license is asked to the nearest point of such real estate or cooperative apartment, not less than forty-five days prior to the date set for the hearing of the application; provided that before the hearing the applicant shall file with the commission an affidavit as to such mailing of notice; and provided further that in meeting this requirement, the applicant shall mail a notice to not less than three-fourths of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment situated within a distance of one hundred feet from the nearest point of the premises as provided in this section.

Haw. Rev. Stat. § 281-57 (Supp. 1992).

Section 281-59, Hawaii Revised Statutes, provides in pertinent part:

§281-59 Hearing. Upon the day of hearing, or any adjournment thereof, the liquor commission shall consider the application and any protests and objections to the granting thereof, and hear the parties in interest, and shall within fifteen days thereafter give its decision granting or refusing the application; provided that if a majority of the registered voters for the area within five hundred feet of the nearest point of the premises for which the license is asked or a majority of the owners and lessees of record of real estate and owners of record of shares in a cooperative apartment within five hundred feet of the nearest point of the premises for which the license is asked have duly filed or caused to be filed their protests against the granting of the license upon the original application, or if there appears any other disqualification under this chapter, the application shall be refused. Otherwise the commission may in its discretion grant or refuse the same.

Haw. Rev. Stat. § 281-59 (Supp. 1992).

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At the public hearing upon Music Link, Inc.'s application for a liquor license, the Commission noted the receipt of a petition requesting the Commission to deny a liquor license to Music Link, Inc. Several letters of protest received by the Commission were also read aloud into the record. At the request of the applicant, the Commission's public hearing was adjourned for five weeks. After the public hearing, Mr. Kekoa D. Kaapu, a member of a neighborhood board, requested to inspect and copy the petition. After contacting the OIP by telephone, and speaking with an OIP staff attorney, the Commission provided Mr. Kaapu with a copy of the petition.

After the Commission disclosed the petition, Music Link, Inc. came into possession of a copy of the petition and sent a mailing to persons who signed the petition providing them with information about its application for a liquor license. The individual responsible for initially circulating the petition and collecting signatures in opposition to the granting of the license subsequently contacted the Commission and complained that the petition should not have been made available for inspection and copying.

At public hearings upon a liquor license, it is the Commission's standard practice to read into the record the contents of letters received protesting the issuance of a license to an applicant. If a petition has been filed with the Commission, the Commission's practice has been to note the receipt of the petition, and to read into the record the number of signatures and the number of owners or voters who signed the petition.

By letter to the OIP dated January 11, 1994, the Commission requested the OIP to provide it with an advisory opinion concerning whether a petition filed with the Commission protesting the issuance of a liquor license must be made available for public inspection under the following circumstances:

1. Before the scheduled public hearing on a license application;
2. After a public hearing when the petition is made part of the record; and
3. After a public hearing when the petition is made part of the record, and the hearing is continued to a later date.

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Additionally, the Commission requested the OIP to advise it whether both the names and addresses of individuals who sign such petitions should be publicly available, and whether the names of individuals who state on the petition that they want their protests to remain confidential must be made publicly available.

DISCUSSION

I. INTRODUCTION

The UIPA, the State's public records law, states "[e]xcept as provided in section 92F-13, each agency upon request by any person shall make government records available for inspection and copying during regular business hours." Haw. Rev. Stat. § 92F-11(b) (Supp. 1992). Under the UIPA, the term "government record" means "information maintained by an agency in written, auditory, visual, electronic, or other physical form." Haw. Rev. Stat. § 92F-3 (Supp. 1992); Kaapu v. Aloha Tower Dev. Corp., 74 Haw. 365, 376 n.10 (1993).

II. RECORDS AUTHORIZED TO BE DISCLOSED BY STATE STATUTE

In addition to the general rule set forth in section 92F-11(b), Hawaii Revised Statutes, section 92F-12, Hawaii Revised Statutes, requires each State and county agency to make certain government records, or information contained therein, available for public inspection and duplication during regular business hours, "[a]ny provision to the contrary notwithstanding." Of relevance to the question presented in this opinion is section 92F-12(b)(2), Hawaii Revised Statutes, which provides that each agency shall disclose "[g]overnment records which, pursuant to federal law or a statute of this State, are expressly authorized to be disclosed to the person requesting access." [Emphasis added.]

As we noted in OIP Opinion Letter No. 92-10 at 11 (Aug. 1, 1992), "the structure of the UIPA itself reflects that the Legislature intended the provisions of the UIPA to yield to specific State statutes, that either expressly restrict, or that expressly authorize the disclosure of government records." Thus, it is necessary for us to examine and apply section 281-14, Hawaii Revised Statutes, that provides:

§281-14 Records. The liquor commission shall ensure that complete records are kept of all commission meetings, proceedings, and acts with reference to all business pertaining to licenses issued, suspended, and revoked, moneys received as license fees and

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otherwise, and disbursements by the commission or under its authority. Unless otherwise prohibited by law, these records shall be open for examination by the public. The records may be destroyed as provided in section 46-43.

Haw. Rev. Stat. § 281-14 (Supp. 1992) (emphases added).¹

The fundamental starting point for the interpretation of a statute is the language in the statute itself, and where the statute's language is plain and unambiguous, the court's only duty is to give effect to the plain and obvious meaning. Kaiser Found. Health Plan Inc. v. Department of Labor & Industrial Relations, 70 Haw. 72 (1988).

Section 281-14, Hawaii Revised Statutes, does not appear to admit of an ambiguity. By its express terms, records "of all commission meetings, proceedings, and acts with reference to all business pertaining to licenses issued, suspended, and revoked," must be available for public inspection "[u]nless otherwise prohibited by law." [Emphasis added.] As drafted, it appears that only records of Commission meetings and proceedings that result in the issuance, suspension, or revocation of a license must be publicly available. This statute appears to exclude from its operation records of Commission meetings that do not actually result in the issuance, suspension, or revocation of a license.²

¹The phrase "[u]nless otherwise prohibited by law," was added to section 281-14, Hawaii Revised Statutes, by Act 171, Session Laws of Hawaii 1990. The legislative history of the 1990 amendments to chapter 281, Hawaii Revised Statutes, fails to provide any guidance concerning the Legislature's intent in adding this limitation to section 281-14, Hawaii Revised Statutes. See S. Stand. Com. Rep. No. 2606, 15th Leg., 1990 Reg. Sess., Haw. S.J. 1086 (1990); H. Stand. Comm. Rep. No. 1194-90, Haw. H.J. 1313 (1990); Conf. Comm. Rep. No. 131, Haw. S.J. 822, Haw. H.J. 821 (1990) ("as communities evolve and community standards change, it is desirable to provide for appropriate changes in the regulation of intoxicating liquor").

²Before 1976, section 281-14, Hawaii Revised Statutes, required the Commission to maintain records "of all its meetings, proceedings and acts with reference to all of its business and pertaining to licenses issued, suspended, and revoked." [Emphasis added.] In 1976, the Legislature amended section 281-14, Hawaii Revised Statutes, to permit the county liquor commissions to destroy old records. In doing so, the Legislature also made a stylistic change to the section by deleting the conjunctive "and"

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We cannot conclude, however, that this would lead to an unreasonable or absurd result and, thus, we are constrained to apply the plain language of the statute.

We would recommend, however, that the Commission seek to clarify, through legislation, the provisions of this section, by updating the statute to describe the other administrative actions taken by the Commission at meetings, such as the denial, renewal, or transfer of liquor licenses, and the imposition of fines.

Because the petition involved in the facts of this opinion were presented at a Commission meeting that had not yet resulted in the issuance of a license, it is our opinion that section 281-14, Hawaii Revised Statutes, does not expressly require the disclosure of this petition. We now turn to an examination of whether, under the general provisions of the UIPA, the petition must nevertheless be made available for inspection and copying.

III. APPLICATION OF UIPA EXCEPTIONS TO PETITIONS PROTESTING THE ISSUANCE OF A LICENSE

In examining the exceptions set forth in section 92F-13, Hawaii Revised Statutes, we find that the only exception that would arguably permit the Commission to withhold access to petitions before the Commission has decided to issue a license would be the "clearly unwarranted invasion of personal privacy" exception.

Based upon court decisions under the open records laws of other states concerning the disclosure of citizen petitions presented to government agencies, we do not believe that the UIPA's clearly unwarranted invasion of personal privacy exception would apply to these government records.

For example, in Excise Commission of Citronelle v. State, 60 So. 812 (Ala. 1912), the court found that a petition

(..continued)

before the term "pertaining." A senate standing committee report concerning Act 55, Session Laws of Hawaii 1976 states:

Your Committee concurs that the liquor commission should ensure that complete records relating to pertinent meetings and proceedings are kept and be made available for examination by the public.

S. Stand. Comm. Rep. No. 695-76, 8th Leg., 1976 Reg. Sess., Haw. S.J. 1610 (1976) (emphasis added).

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supporting the issuance of a liquor license to an applicant must be available for public inspection and copying. Similarly, in International Union, Etc. v. Gooding, 28 N.W.2d 730 (Wis. 1947), the court found that a petition signed by citizens of the community requesting the State Board of Employment Relations to order striking employees to determine whether employees were willing to settle the strike was a public record. The court in this case reasoned:

The petitioners sought to induce action by the defendants as public officers and must be deemed to have contemplated a public proceeding before the commission. They are in no position to insist that any public interest would be served by keeping this document secret. The union was interested in the subject matter of the petition and we know of no common-law rule of policy that would preclude it from inspection of the petition.

Gooding, 29 N.W.2d at 736.

Likewise, in Moorehead v. Arnold, 637 P.2d 305 (Ariz. 1981), the court held that a petition signed by citizens opposed to an annexation was not protected from public inspection and copying, and in State v. Ezell, 282 So.2d 266 (Ala. 1973), the court found that a petition for a "local option liquor referendum" was subject to public inspection and copying.

Furthermore, under section 92F-14(a), Hawaii Revised Statutes, there is a substantial public interest in the disclosure of these petitions. Under section 281-59, Hawaii Revised Statutes, the Commission must deny a license application if it is presented with the protests of a majority of the registered voters, or a majority of owners of record of real property, for the area within five hundred feet of the license applicant's premises.

Without the public access to petitions presented in protest to the issuance of a license, those applying for a liquor license have no meaningful opportunity to challenge the sufficiency of the protests under section 281-59, Hawaii Revised Statutes. Although we have found in other contexts that individuals' home addresses are protected from disclosure under the UIPA's personal privacy exception,³ without access to the addresses set forth in

³See generally, OIP Op. Ltr. No. 89-16 (Dec. 27, 1989).

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a petition to the Commission it would be extremely difficult to determine whether those protesting the issuance of a license are located within 500 feet of the premises for which a license is being sought. We conclude that under section 92F-14(a), Hawaii Revised Statutes, any privacy interest that an individual may have in a petition to the Commission is outweighed by the public interest in disclosure.

Accordingly, it is our opinion that under the UIPA, petitions submitted to the Commission protesting the issuance of a license must be made available for public inspection and copying once received by the Commission.

CONCLUSION

It is our opinion that section 281-14, Hawaii Revised Statutes, only requires (unless otherwise prohibited by law) the availability of the records of Commission meetings that actually result in the issuance, suspension, or revocation of a license. It does not apply to Commission records where the Commission has not issued, suspended, or revoked a license.

However, under the provisions of the UIPA, it is our opinion that the Commission must make petitions protesting the issuance of a license available for public inspection and copying once received by the Commission. In our opinion, these government records would not be protected from disclosure by any of the UIPA's exceptions to required agency disclosure.

Please contact me at 586-1404 if you should have any questions regarding this matter.

Very truly yours,

Hugh R. Jones
Staff Attorney

APPROVED:

Kathleen A. Callaghan
Director

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HRJ:sc
c: Honorable Les Ihara, Jr.
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