

Op. Ltr. No. 06-01 Public Testimony

This opinion was affected by Act 264 of 2022. That act amended section 92-3, HRS, to prohibit boards from limiting public testimony "to the beginning of a board's agenda or meeting," and thus statutorily overruled this opinion to the extent that it concluded that the Sunshine Law allowed a board to hear all public testimony at the beginning of a meeting.



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OPINION

Requester: Mr. Daniel Dinell, Executive Director
Date: February 28, 2006
Agency: Hawaii Community Development Authority ("HCDA")
Subject: Public Testimony (S RFO-G 06-8 and 06-9)

REQUEST FOR OPINION

Requester seeks an opinion on two issues relating to public testimony under the Sunshine Law, part I of chapter 92, Hawaii Revised Statutes ("HRS").¹

This advisory opinion is based solely upon the facts presented in your letter dated February 6, 2006, unless otherwise indicated.

QUESTIONS PRESENTED

- (1) May public testimony for all agenda items be taken at the beginning of a meeting, or must the public must be allowed to testify as HCDA considers each agenda item?
- (2) Does a testifier have the right to question board members during his or her testimony?

BRIEF ANSWER

- (1) Public testimony on all agenda items may be taken at the beginning of a meeting. HCDA, however, must allow a person to testify on as many of the agenda items as the person wishes.

¹ HCDA is a "board" as that term is defined by section 92-2(1), HRS.

- (2) A testifier does not have the right to question board members under the guise of oral testimony.

DISCUSSION

A. Timing of Oral Testimony

The Sunshine Law requires a board to allow oral testimony on any agenda item. Haw. Rev. Stat. § 92-3 (1993). The statute, however, does not dictate when the testimony must be allowed.² Accordingly, we do not believe that requiring members of the public to testify at the beginning of a meeting and not immediately prior to HCDA's consideration of a particular agenda item is inconsistent with the statute. Should HCDA wish to take testimony at the beginning of its meeting, though, we caution HCDA that it should be sure to (1) make clear on its agenda that all testimony will be taken at the beginning of the meeting, and (2) permit each testifier to testify on each agenda item the person wishes to speak to at that time. Moreover, for instance, if a board has a rule limiting testimony to three minutes and a person wants to testify to four agenda items, then the board must allow the person to testify for three minutes on each of the four items, not just three minutes total.

B. Testifiers' Questions to HCDA

The Sunshine Law does not require HCDA to answer a testifier's questions about an agenda item. Rather, section 92-3 requires that the board "afford all interested persons an opportunity to present oral testimony on any agenda item." The plain meaning of the statute is that a person is entitled to present oral testimony to the board, i.e., to offer a declaration or evidence for the board's consideration in the course of a deliberative hearing. The right to present oral testimony cannot be interpreted to include a right to question and demand answers from board members. In light of the statute's purpose³ and in the absence of any Sunshine Law provision that provides such a right, OIP must conclude that a member of the public has no right to question board members under the guise of

² OIP notes, however, that by definition testimony is offered **during** a trial or a deliberative hearing, i.e., prior to a decision. See, e.g. "Testimony," The American Heritage Dictionary, <http://education.yahoo.com/reference/dictionary/entry/testimony>. Thus, if a board did not permit public comment until after it discussed or acted on an item the board would have failed to allow "testimony" on the item as the Sunshine Law requires.

³ The Sunshine Law is intended to open up the governmental processes to public scrutiny and participation by requiring a board's discussions, deliberations and actions to be conducted as openly as possible. Haw. Rev. Stat. § 92-1 (1993). The "participation" intended by the statute is the right to offer testimony to the board, not to question the board.

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oral testimony, nor do board members have any obligation to respond to such questioning.⁴

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⁴ This opinion is not meant and should not be interpreted to mean that board members cannot answer questions posed to them by testifiers; rather, the Sunshine Law does not require board members to do so.