

Quick Review: Roundtable Discussions with Multiple Boards Subject to the Sunshine Law (March 2017)

The open meeting requirements of Hawaii's Sunshine Law, part I of chapter 92, Hawaii Revised Statutes (HRS), apply when two or more board members discuss board business. OIP is sometimes asked how multiple boards may comply with the Sunshine Law's requirements when their members participate together in a roundtable meeting, symposium, or similar event and will be discussing issues that are within their respective boards' areas of authority.

When planning an event that will bring together members of multiple Sunshine Law boards, **each attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. Members of different boards can have different justifications under the Sunshine Law.** No justification is needed for boards that are not subject to the Sunshine Law or for discussions with roundtable participants who are not Sunshine Law board members.

The key factor in determining an appropriate Sunshine Law justification is the number of members who will be there from any one board. The Sunshine Law applies only when there are two or more board members discussing board business. If each board sent **only one member** to the event, then there would be **no Sunshine Law implications**. Even if the other roundtable members belong to other Sunshine Law boards, there is no problem so long as there is no more than one member from the same board.

If two or more members of the same board are part of the roundtable discussion, even if they are participating as representatives of different boards, then the Sunshine Law is implicated and the members' discussion must be justified. And, if an individual is a member of more than one Sunshine Law board, that person must meet the Sunshine Law's requirements for each board that he or she sits on.

The **simplest approach** will be for the various boards involved to rely on the Sunshine Law's permitted interactions to justify their members' attendance at the event. The two **permitted interactions** most likely to be useful in such a situation are sections 92-2.5(a) and (e), HRS.

When **no more than two members of the same board** will be attending the roundtable discussion, section **92-2.5(a), HRS**, permits them to talk about board business so long as no commitment to vote is made or sought. This permitted interaction does not require any sort of prior arrangement or subsequent reporting. However, the attendees will need to be careful to **avoid serial use** of this permitted interaction – for example, if Board A members One and Two are discussing their board business in the course of the roundtable event, neither of them should then go and talk to Board A member Three about the same issues outside a Board A meeting.

If more than two members of the same board are present, and assuming they constitute less than a quorum of that board, they can still participate in the roundtable discussion under section **92-2.5(e), HRS**, which allows two or more members of a board (but less

than a quorum) to attend and participate in an **informational meeting** or presentation covering board business. No commitment to vote can be made or sought during the discussion, and the event cannot be specifically and exclusively directed at the board. This permitted interaction for informational meetings does not require prior arrangement to use, but it does require that the attending members report their attendance and the board business discussed at the next meeting of their own board.

It is not necessary for those attending the event from different boards to all rely on the same permitted interaction to justify their attendance; they can mix and match, based on which permitted interaction is appropriate based on the number attending from each board. For instance, Board A may send three of its members and Board B may send four, with each of those boards relying on section 92-2.5(e), HRS, and the members reporting back later to their respective boards. Board C could send only two people who are relying on section 92-2.5(a), HRS, and need not report to their board. In addition, you could have other people present who are not members of any board and need not justify their attendance under the Sunshine Law at all.

If at least one Sunshine Law board will have a quorum of its members present at the roundtable event, then the event will need to be noticed and conducted as a Sunshine Law meeting, either as a meeting just of the board that will have a quorum present, or as a joint meeting of the various boards that have quorums of their members present. As before, the various boards sending members to the roundtable event can mix and match their methods of ensuring compliance with the Sunshine Law. For instance, you might have Board A with all seven of its members present, Board B with five of its nine members, Board C with three of its seven members, and Board D with two of its five members. In that case, the roundtable event would have to be noticed as a joint meeting of Boards A and B, but it should not be noticed as a meeting by Boards C and D since there would not be a quorum of members present from Boards C or D. Instead, the three Board C members would rely on the informational meeting provisions of section 92-2.5(e), HRS, to justify their attendance, and thus would report back to Board C at its next meeting. The two members of Board D could rely on the two-person permitted interaction under section 92-2.5(a), HRS, to justify their participation.

In closing, when planning an event that will bring together members of multiple Sunshine Law boards, please remember that every attendee who is a member of a Sunshine Law board must be able to justify his or her presence under the Sunshine Law with respect to his or her own board. The justification could be that no one else from that particular board was present, so there was no discussion of board business among that board's members; or it could be that one of the Sunshine Law's permitted interactions applied to the particular board's members who attended; or it could be that the event was noticed as a meeting of the members' own board (or a joint meeting of multiple boards including theirs). **The justification does not have to be the same for all the boards with members attending, but all members of each board should have a Sunshine Law justification before attending and participating in the discussion of their board's business during the roundtable meeting.**