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The Office of Information Practices (OIP) is authorized to resolve complaints concerning compliance with or applicability of the Sunshine Law, Part I of chapter 92, Hawaii Revised Statutes (HRS), pursuant to sections 92-1.5 and 92F-42(18), HRS, and chapter 2-73, Hawaii Administrative Rules (HAR).

OPINION

Requester: Ira Calkins
Board: Hawaii Public Housing Authority Resident Advisory Board
Date: March 23, 2016
Subject: Notice of Public Meetings Required (S APPEAL 14-4)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Hawaii Public Housing Authority Resident Advisory Board (Board) violated the Sunshine Law by holding its August 9, 2013 meeting (Meeting) without first filing its notice (Notice) at the Office of the Lieutenant Governor (LT GOV) at least six calendar days before the Meeting.

Unless otherwise indicated, this decision is based upon the facts presented in Requester's letter to OIP dated August 11, 2013; the August 9, 2013 agenda (Agenda) included in the unfiled Notice; and the Board's letter to OIP dated August 13, 2013 (Response).

QUESTION PRESENTED

Whether the Board violated the Sunshine Law by holding its Meeting without filing its Notice at the LT GOV at least six calendar days before the Meeting.

BRIEF ANSWER

Yes. The Sunshine Law was violated when the Board held its Meeting without filing its Notice at the LT GOV at least six calendar days before the Meeting.

FACTS

On August 11, 2013, Requester complained that the Board violated the Sunshine Law when it failed to provide proper notice of its August 9, 2013 meeting. Specifically, Requester complained that the Board failed to file its notice with the Office of the Lieutenant Governor at least six calendar days before its meeting.

DISCUSSION

I. Sunshine Law Violation: No Filing of Notice

The Sunshine Law states, in pertinent part, “[t]he board shall file the notice in the office of the lieutenant governor or the appropriate county clerk’s office, and in the board’s office for public inspection, at least six calendar days before the meeting[.]”¹ HRS § 92-7(b) (2012). For state boards, Executive Memorandum Number 11-11 requires that the notice be posted on the State Online Calendar at <http://calendar.ehawaii.gov/calendar/html/event>, “as soon as” the notice is posted at the LT GOV. In addition, the Board’s own administrative rules provide that its “[s]taff shall provide notice of the meetings of the resident advisory board pursuant to the requirements of section 92-7, HRS.” HAR § 15-181-45 (2002).

Here, the Board admittedly did not file any notice of its Meeting. As a state board, the Board was required by the Sunshine Law to file its notice at the LT GOV. The Board was also required by its own administrative rules, specifically section 15-181-45, HAR, to comply with section 92-7, HRS, and provide proper notice. Although the Board created the Notice for its Meeting, it did not file the Notice at the LT GOV. In the Board’s Response, the Board explained that “[u]pon following up with our staff, inadvertently, the RAB Agenda was not sent to the Lt. Governor’s office as required.” It then reassured OIP that “[h]ereafter, we will ensure the RAB Agenda will be sent electronically and/or faxed to the Lt. Governor’s office in a timely manner.” OIP, therefore, concludes that the Board did not file any notice of

¹ LT GOV’s Policy on Filing Written Public Notice for State Board Meetings Pursuant to chapter 92, HRS, effective July 14, 2015, states, “[f]ilings will be accepted either by mail, in person or may be transmitted via facsimile to the Office of the Lieutenant Governor on the 5th floor of the State Capitol during regular business hours.” Electronic transmission is not an option for filing. (Emphasis added).

its Meeting in violation of the Sunshine Law, and because no notice was filed, the Board should not have held its Meeting.

II. Recommendations

Requester asserted that the “[p]erson in charge should be criminally liable.” OIP is without authority to pursue or impose criminal sanctions in Sunshine Law cases and further notes the violation in this case appears to have been inadvertent. In the future, however, if it can be proven to a court that a person willfully violated any provisions of the Sunshine Law, then a convicted person may be summarily removed from the board unless otherwise provided by law. § HRS 92-13 (2012). Additionally, any final action taken in violation of sections 92-3 and 92-7, HRS, may be voidable upon proof of violation if a suit is commenced in court within 90 days of the action. HRS § 92-11 (2012).

For now, OIP recommends that the Board prevent future violations by studying OIP’s Sunshine Law training material on OIP’s website at www.oip.hawaii.gov/training/, where there are many helpful guides, checklists, and quick reviews on problematic issues. Specifically, OIP advises the Board and its staff to review the Sunshine Law Training Video, which provides a basic overview of the Sunshine Law and the other training materials discussed below.

OIP notes *sua sponte* that the Agenda included some items that were not sufficiently detailed. The Sunshine Law requires that meeting notices include an agenda for a public meeting to be sufficiently detailed so as to provide the public with reasonable notice of what the board intends to consider. The statute’s notice requirement is intended to, among other things, give interested members of the public enough information so that they can decide whether to participate in the meeting.” OIP Op. Ltr. No. 03-22 at 6. A board can only discuss, deliberate, act on, or otherwise consider matters that were included on the board’s agenda, so the agenda as filed will generally define and limit the issues the board can consider at the meeting.

In this case, the Agenda only names individuals and events, without any further description. For example, under “New Business,” the Agenda stated “Organize RAB meetings with PEO.” Under the item “Agenda for September 13, 2013 meeting,” one item was “PEO Ben Park.” There were no descriptions or explanations of what these Agenda items were that would give members of the public enough information to decide whether they wanted to attend and participate in the meeting. OIP thus recommends that the Board’s future agendas set forth detailed descriptions of agenda items, instead of just the titles of documents or events, or names of persons speaking or to be discussed about at the meeting. For guidance and examples on how to write a sufficiently detailed agenda, the Board and its staff should consult the [Agenda Guidance for Sunshine Law Boards](#).

OIP also notes *sua sponte* that the Agenda at issue improperly noted by asterisk at the bottom of the page, “any revisions to the Agenda will be provided at the meeting.” Revisions cannot be simply “provided at the meeting” and the Board must be mindful of the procedures set out in section 92-7(d), HRS, when revising its agendas. As discussed in the Agenda Guidance for Sunshine Law Boards, a board does have the limited ability to add minor items to its agenda at a meeting, which requires a two-thirds vote of a board’s total membership (including members not present or membership slots not filled) to add an item that is not “of reasonably major importance” and does not “affect a significant number of persons.” HRS § 92-7(d) (2012). An item “of reasonably major importance” that “affect[s] a significant number of persons,” however, cannot be added to an agenda, and would have to be made part of a future properly filed agenda. In the future, therefore, if the Board chooses to revise its agenda, it must obtain the requisite two-thirds vote of the Board’s total membership, and it cannot add an item “of reasonably major importance” that “will affect a significant number of persons.”

Lastly, OIP recommends that for help in drafting and filing notices and agendas, the Board review the Public Meeting Notice Checklist and the Quick Review: Sunshine Law Meeting Notice Requirements. For additional assistance or more tailored training, please contact OIP.

RIGHT TO BRING SUIT

Any person may file a lawsuit to require compliance with or to prevent a violation of the Sunshine Law or to determine the applicability of the Sunshine Law to discussions or decisions of a government board. HRS § 92-12 (2012). The court may order payment of reasonable attorney fees and costs to the prevailing party in such a lawsuit. Id.

Where a final action of a board was taken in violation of the open meeting and notice requirements of the Sunshine Law, that action may be voided by the court. HRS § 92-11. A suit to void any final action must be commenced within ninety days of the action. Id.

This opinion constitutes an appealable decision under section 92F-43, HRS. A board may appeal an OIP decision by filing a complaint with the circuit court within thirty days of the date of an OIP decision in accordance with section 92F-43. HRS §§ 92-1.5, 92F-43 (2012). The board shall give notice of the complaint to OIP and the person who requested the decision. HRS § 92F-43(b). OIP and the person who requested the decision are not required to participate, but may intervene in the proceeding. Id. The court’s review is limited to the record that was before OIP unless the court finds that extraordinary circumstances justify discovery and admission of additional evidence. HRS § 92F-43(c). The court shall uphold an OIP decision unless it concludes the decision was palpably erroneous. Id.

A party to this appeal may request reconsideration of this decision within ten business days in accordance with section 2-73-19, HAR. This rule does not allow for extensions of time to file a reconsideration with OIP.

This letter also serves as notice that OIP is not representing anyone in this appeal. OIP's role herein is as a neutral third party.

OFFICE OF INFORMATION PRACTICES

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APPROVED:

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