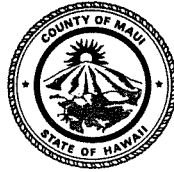


ALAN M. ARAKAWA
Mayor



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February 27, 2012

MEMORANDUM

T O: Joshua Stone, Chair
Maui County Charter Commission

F R O M: Edward S. Kushi
First Deputy Corporation Counsel

A handwritten signature in black ink, appearing to be "E. Kushi", is written over the name of the sender.

SUBJECT: Proposal No. 4; Requiring Interactive Communications
Access for the Public to All County Council and County
Council Committee Meetings

As requested at your February 13, 2012 regular meeting, attached for your information, review and further discussion in your deliberations regarding the above-referenced proposal find the following copies:

- 1) Section 92-3.5, Hawaii Revised Statutes, entitled "Meeting by videoconference; notice; quorum."; and
- 2) Excerpt from the State of Hawaii's Office of Information Practices "OPEN MEETINGS, Guide to 'The Sunshine Law' for State and County Boards", October 2011 which summarizes said offices position and interpretation of Section 92-3.5, HRS.

ESK:lk

cc: Charter Commission Members

S:\ALL\ESK\Charter Commission\memo to stone re section 92-3.5, hrs.wpd

§92-3.5 Meeting by videoconference; notice; quorum. (a) A board may hold a meeting by videoconference; provided that the videoconference system used by the board shall allow both audio and visual interaction between all members of the board participating in the meeting and the public attending the meeting, at any videoconference location. The notice required by section 92-7 shall specify all locations at which board members will be physically present during a videoconference meeting. The notice shall also specify that the public may attend the meeting at any of the specified locations.

(b) Any board member participating in a meeting by videoconference shall be considered present at the meeting for the purpose of determining compliance with the quorum and voting requirements of the board.

(c) A meeting held by videoconference shall be terminated if, after the meeting convenes, both the audio and video communication cannot be maintained with all locations where the meeting is being held, even if a quorum of the board is physically present in one location; provided that a meeting may be continued by audio communication alone, if:

- (1) All visual aids required by, or brought to the meeting by board members or members of the public have already been provided to all meeting participants at all videoconference locations where the meeting is held; or
- (2) Participants are able to readily transmit visual aids by some other means (e.g., fax copies), to all other meeting participants at all other videoconference locations where the meeting is held. If copies of visual aids are not available to all meeting participants at all videoconference locations where the meeting is held, those agenda items related to the visual aids shall be deferred until the next meeting; and
- (3) No more than fifteen minutes shall elapse in implementing the requirements listed in paragraph (2). [L 1994, c 121, §1; am L 2000, c 284, §2; am L 2006, c 152, §1]

§92-5 Exceptions. (a) A board may hold a meeting closed to the public pursuant to section 92-4 for one or more of the following purposes:

- (1) To consider and evaluate personal information relating to individuals applying for professional or vocational licenses cited in section 26-9 or both;
- (2) To consider the hire, evaluation, dismissal, or discipline of an officer or employee or of charges brought against the officer or employee, where consideration of matters affecting privacy will be involved; provided that if the individual concerned requests an open meeting, an open meeting shall be held;
- (3) To deliberate concerning the authority of persons designated by the board to conduct labor negotiations or to negotiate the acquisition of public property, or during the conduct of such negotiations;
- (4) To consult with the board's attorney on questions and issues pertaining to the board's powers, duties, privileges, immunities, and liabilities;
- (5) To investigate proceedings regarding criminal misconduct;
- (6) To consider sensitive matters related to public safety or security;
- (7) To consider matters relating to the solicitation and acceptance of private donations; and
- (8) To deliberate or make a decision upon a matter that requires the consideration of information that must be kept confidential pursuant to a

state or federal law,

(b) In no instance shall decision in an executive meeting specified in subsection (a). No electronic communication shall be used in this part to make a decision over which the board has supervisory authority. [L 1975, c 166, pt of §1; am L 1998, c 48, §1; am L 1999, c 48, §1]

Subsection (a)(2) and §92-9 read to mean that matters deliberated or decided in executive meetings are not for hire, and they must maintain the confidentiality of the convening of the executive meeting.

Although §92-2.5(a) does not exclude city council members from one-on-one conversations, members engaged in a series of one-on-one conversations relating to a particular item of council business, under subsection (b), the open meeting requirement was not violated and the strong policy of having the council deliberate and decide its business in public was thwarted and frustrated. (App.), 175 P.3d 111.

In a suit deciding whether disclosure of council executive session minutes in a circuit court properly found that the court applied §92F and this chapter; if there is an exception to the open meeting requirement put forth in this chapter, such as those enumerated in this section, the council is not required to disclose the minutes to the public; if the meeting did not disclose the minutes pursuant to §92-5, the council is not required to disclose the minutes pursuant to §12. 120 H. 34 (App.), 200 P.3d 40.

§92-6 Judicial branch applicability. AMENDED to read: "changed to "crime victim"

§92-7 Notice. (a) Notice shall be given in advance. The notice shall be considered at the forthcoming meeting and in the case of an executive meeting, the notice shall be posted at the site of the meeting.

(b) The board shall meet or the appropriate court shall hold a session, at least six calendar days before the meeting is held, posted at the site of the meeting.

(c) If the written notice is not received by the mayor or the appropriate court, the lieutenant



May a board convene a meeting via videoconference?

Boards are authorized to hold meetings by videoconference. The board's meeting, however, must be terminated if both the audio and the video communication cannot be maintained at **all** of the videoconference locations from which the members are attending. When noticing a videoconference meeting, boards must indicate the physical and videoconferenced locations where board members will be physically present, and must indicate that the public can attend the meeting at any of the specified locations.

If the video communication cannot be maintained during the videoconference meeting, then the meeting may be continued by audio communication alone if (1) all visual aids have already been provided to all meeting participants at all videoconference

locations where the meeting is held or (2) within 15 minutes, participants are able to readily transmit visual aids by some other means (e.g., fax copies) to all other meeting participants at that videoconferenced location.

OIP has interpreted the limitations of HRS section 92-3.5 to apply only to board members' remote participation in a meeting, and not to public testimony. Thus, a board may hear speakerphone testimony from members of the public. Similarly, a board may accept public testimony via videoconference from sites that were not included in the public notice. A board may also list in its notice a courtesy videoconference site where the public can attend and offer testimony even though no board member will be physically present, and the board would not be required to cancel the remainder of its meeting if such a courtesy site were to lose its audio or video connection to the meeting site. To avoid public confusion, however, the board's notice must make clear that no board member will be physically attending from that videoconferenced site and that the meeting will continue even if the connection to the site is lost.