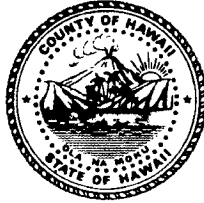


Harry Kim  
Mayor



Lincoln S.T. Ashida  
Corporation Counsel

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Counsel

COUNTY OF HAWAII  
OFFICE OF THE CORPORATION COUNSEL

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August 14, 2003

MEMORANDUM

2003-4

TO: HAWAII COUNTY COUNCIL  
ALL COUNTY BOARDS AND COMMISSIONS

FROM: LINCOLN S. T. ASHIDA *LSA*  
Corporation Counsel

RE: **Further Clarification of Opinion from Office of Information  
Practices regarding Executive Meetings**

A board member recently raised a question regarding our advisory dated July 17, 2003, based upon an opinion received from the Office of Information Practices (hereinafter "OIP") concerning executive meetings. A copy of our earlier memorandum is attached for your reference.

Specifically, the board member asked whether it was permissible for an attorney from our office to remain for the entire duration of the executive meeting.

In our July 17th memorandum, the Corporation Counsel stated:

Thus, the OIP has stated that our attorneys, as a general practice, should remain in the executive meeting so long as their presence (i.e., legal assistance) is required, and no longer. Therefore, the continued presence of our attorneys for the duration of an executive meeting *would only occur in situations where their counsel is required throughout.* (Emphasis supplied).

Thus, assuming the board or commission *requests at the beginning of the executive meeting* that our attorney remain, for the purpose of addressing legal issues or questions which may arise during the course of the executive meeting, the continued presence of our attorney for the duration of the executive meeting is permitted.

We contacted the OIP to verify whether this was an acceptable practice. We stressed the fact that the majority of board and commission members are lay people with limited practical knowledge of our State Sunshine Law. Historically, our attorneys remained in executive meetings to ensure compliance with the law, and to guard against inadvertent error which may lead to invalidation of board action, or even litigation.

The OIP has agreed with our earlier stated recommendation that so long as the board requests the presence of our attorneys during the executive meeting, notwithstanding the fact legal questions may only be anticipated, the continued presence of our attorneys throughout the duration of the meeting is permissible.

We also stress the importance of adhering to the requirements of our Hawai'i County Charter, with respect to open meetings. Article XIII, Section 13-20(b), of the Charter provides in pertinent part as follows:

All meetings of the council, boards and commissions shall be held in the council meeting room or other public places and no such bodies shall take any official action except at a meeting open to the public. Where personal matters affecting the privacy of an individual are to be considered, the council, board or commission may, at the request of the individual involved, consider such matters in closed session; however, any official action resulting therefrom shall be acted upon in an open meeting. Boards and commissions that are empowered to give examinations to determine the capabilities of individuals shall be excepted from the provisions of this section when technical examinations and questionnaires are being drafted by such bodies.

The earlier OIP opinion was written in response to a request from County Clerk Al Konishi and I regarding who may be present during executive meetings. As a practical matter, the Hawai'i County Council rarely goes into executive session, with the exception of discussing ongoing litigation cases with our attorneys.

With respect to such attorney-client discussions, a closed meeting is permissible, based upon a 1977 order by former Third Circuit Court Administrative Judge Ernest Kubota, wherein the Court opined that the above-cited Charter provision allows discussions with counsel regarding pending or imminent litigation, or pending contested cases in administrative proceedings. See County Council v. David Shapiro, Civil No. 4684 (Third Circuit Court, Second Division, July 13, 1977).

However, other boards and commissions may desire to hold executive meetings to discuss personnel matters, or other items where a significant privacy interest exists. In these situations, although the State Sunshine Law may permit such private meetings, our County Charter may not, absent the consent of the person whose privacy interest is impacted. In these situations, the specific consent of the person involved should be sought.

Thank you for allowing our office to clarify these important issues with our County clients.

If you have any questions regarding this matter, I invite you to contact me at 961-8304, extension 26, or via e-mail at [lashida@co.hawaii.hi.us](mailto:lashida@co.hawaii.hi.us).

Thank you.

Encl.

cc: Honorable Harry Kim, Mayor (w/ encl.)  
All Department Heads (w/ encl.)