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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: Peter Fritz
Board: Disability and Communication Access Board
Date: December 19, 2025
Subject: Permitted Interactions at a Meeting Lacking Quorum
(S APPEAL 24-05)

REQUEST FOR OPINION

Requester seeks a decision as to whether the Disability and Communication Access Board (DCAB) violated the Sunshine Law by discussing board business when its scheduled meeting had not yet achieved quorum.

Unless otherwise indicated, this decision is based upon the facts presented in an email from Requester to OIP dated January 15, 2024, with a video transcript of the November 16, 2023, meeting attached; two emails from OIP to Requester dated January 16, 2024, both with email threads; two emails from Requester to OIP dated January 16, 2024, one with an email thread, and the other with a video transcript of the November 16, 2023, meeting with page numbers attached; an email from OIP to DCAB dated January 23, 2024, with seven attachments; an email from OIP to Requester dated January 23, 2024, with two attachments; an email from DCAB to OIP dated January 30, 2024, with an email thread and attachments; an email from OIP to DCAB dated February 9, 2024, with an email thread and attachments; an email from DCAB to OIP dated February 21, 2024, with an email thread and attachments; an email from OIP to DCAB dated February 21, 2024, with an email thread; an email from OIP to the Department of Attorney General (AG) dated

March 19, 2024, with an email thread; an email from the AG to OIP dated April 2, 2024, with an attachment; an email from OIP to DCAB and the AG, dated September 3, 2025; and an email from the AG to OIP dated September 10, 2025, with an email thread.

QUESTIONS PRESENTED

1. Whether the Sunshine Law allows a board to convene a meeting when it has not achieved quorum.
2. Whether DCAB properly held an “informational meeting” when it did not have quorum.
3. Whether the Sunshine Law allowed DCAB to invoke the permitted interaction at section 92-2.5(d), HRS, to receive testimony and presentations while waiting to achieve quorum.
4. Whether board members are allowed to elaborate on presentations, offer suggestions, or express voting inclinations when they receive testimony and presentations as a permitted interaction under section 92-2.5(d), HRS, because the meeting could not convene due to a lack of quorum.
5. Whether the Sunshine Law permits a board to convene a scheduled meeting when it achieves quorum after cancelling the meeting.

BRIEF ANSWERS

1. No. A “meeting” is defined as “the convening of a board for **which a quorum is required** in order to make a decision or to deliberate toward a decision upon a matter” HRS § 92-2 (emphasis added). Therefore, quorum is a prerequisite for a valid meeting. *Id.* OIP finds that DCAB called its meeting to order with only seven members present, but it needed nine members to establish quorum. OIP therefore concludes that DCAB violated the Sunshine Law by convening a meeting without a quorum of board members present.

2. No. In OIP Opinion Letter Number F23-01 (Opinion F23-01), OIP previously addressed the issue of whether a board may hold an “informational meeting” when it lacks quorum and concluded that the Sunshine Law does not permit such meetings because there is no provision in the law allowing board members to discuss board business at a scheduled meeting lacking quorum, except as specifically authorized by one of the Sunshine Law’s permitted interactions. In this appeal, OIP finds that DCAB’s “informational meeting” without quorum was not authorized by a permitted interaction for the reasons discussed below.

Therefore, DCAB violated the Sunshine Law when its members heard testimony and presentations and engaged in discussions without quorum.

3. No. When a board cannot attain quorum at the start of a noticed meeting, it has three options. First, it may delay the meeting briefly while waiting for quorum, but no business, including receiving testimony or presentations, may occur during this time. The delay must not be so long that it effectively deprives the public of access or participation, which would violate the Sunshine Law's notice requirements. Second, the board may cancel the meeting due to lack of quorum. If a board chooses this option, OIP recommends that the board clearly announce the cancellation at the scheduled start time and update any posted notices or calendars accordingly. Third, if the meeting is canceled for lack of quorum, the board members present may receive testimony and presentations as a permitted interaction under section 92-2.5(d), HRS, provided that they do not deliberate or make decisions and that they follow specific procedural requirements. However, this permitted interaction only applies when a meeting has been canceled or terminated, not merely delayed. Here, OIP finds that DCAB did not inform the public that the meeting was canceled due to lack of quorum. Instead, it improperly proceeded with receiving testimony during a period without quorum, treating the meeting as an "informational meeting," which is not authorized under the Sunshine Law. OIP concludes that DCAB's actions in hearing testimony and presentations without quorum violated the Sunshine law because the meeting had not been canceled as required for section 92-2.5(d), HRS, to apply.

4. No. Under section 92-2.5(d), HRS, when a meeting is canceled due to lack of quorum or terminated under section 92-3.5(c), HRS, board members present may receive testimony and presentations and ask testifiers and presenters questions, but they are strictly prohibited from deliberating or making decisions until a subsequent, properly noticed meeting. In this case, OIP finds that during a period without quorum, board members went beyond permissible questioning when one member expressed how she would vote, and the Chair offered suggestions and elaborated on a presentation. These actions constituted deliberation, thereby violating the Sunshine Law's restrictions on board conduct when quorum is not achieved at a scheduled meeting. OIP concludes that the DCAB members' deliberation on agenda items violated the Sunshine Law and were an additional reason that the permitted interaction in section 92-2.5(d), HRS, did not apply.

5. No. If DCAB had announced that the meeting was canceled due to lack of quorum, it could not later decide to convene the canceled meeting upon achieving quorum regardless of whether the members present had proceeded to hear testimony and presentations in reliance on the permitted interaction in section 92-2.5(d), HRS. Once a board informs the public that a noticed meeting is canceled, the public is entitled to rely on that information and for the board to reschedule the meeting for the same day with no posted notice would violate the Sunshine Law's

notice requirements in section 92-7, HRS. OIP concludes that the Sunshine Law does not permit a canceled meeting to be uncanceled and resumed for deliberation and decision-making. Instead, any deliberation or decision-making must occur at a separate, duly noticed meeting held after the canceled meeting. Thus, if DCAB had in fact canceled its meeting for lack of quorum, as it should have done for the members present to hear testimony and presentations as a permitted interaction under section 92-2.5(d), HRS, DCAB still would have violated the Sunshine Law by subsequently considering board business in a meeting that had already been canceled.

FACTS

DCAB is a state board administratively attached to the Department of Health, consisting of seventeen members. HRS § 348F-2 (2015). It is undisputed that DCAB is subject to the Sunshine Law and requires nine members for quorum. See Statement by DCAB’s former Executive Director (ED), video call of DCAB’s General Board Meeting, at 0013:40, Zoom (Nov. 16, 2023) (on file with OIP)¹ (Recording) (explaining that nine members are required to make quorum); see also HRS § 92-15 (2012) (setting quorum at a majority of members to which a board is entitled where the law or ordinance creating the board does not otherwise specify).

DCAB noticed a general board meeting to be held on November 16, 2023, from 11:00 a.m. to 1:00 p.m. (Meeting), via Zoom. The unedited Recording captured a pre-meeting conversation between DCAB’s ED and the Chairperson (Chair). During this conversation, the ED explained to the Chair that there would be a “slim margin” and “a window” to achieve quorum. Id. at 00:13:40. The ED stated, “if we need to take votes, [Chair] Violet, it’ll have to be between 11:30 and 12:00. That’s when we’ll have 9 to make quorum.” Recording at 00:13:54. The ED further explained that a member, “Scott[,] has to leave early and [another member] Lisa Ann will not be here until 11:30 so we’ll have nine members and if one doesn’t show up, then it’s gonna be an information meeting.” Id. at 00:14:06. The ED stated, “If we want to take a vote on anything, . . . the sweet spot is between 11:00 and 12:00, or when we have full quorum.” Id. at 0015:02. The Chair and ED further discussed that the vote on the approval of the minutes should be held off until they have quorum. Id. at 00:15:15.

At approximately 11:03 a.m., the Chair initiated the Meeting with a welcome and read out loud the board’s public testimony instructions and remote meeting procedures, as stated on the Meeting notice and agenda item I. Transcript of

¹ DCAB emailed OIP a link to the unedited video recording on February 21, 2024. The timestamps of the unedited video recording do not align with the timestamps in the transcripts. The transcripts did not include the ED and Chair’s pre-meeting discussion.

DCAB's General Board Meeting, at 1:06-2:05 (Nov. 16, 2023) (Tr.).² Before roll call, the Chair "call[ed] the meeting to order" at 11:06 a.m. Tr. 3: 4-15. The ED then took roll call attendance of DCAB's board members. Tr. 3:16 to 6:1. As indicated by the ED prior to the start of the meeting, DCAB did not have quorum. Only seven members were present, but it needed nine members to establish quorum. The ED announced to meeting participants that the board was expecting two more members to attend the meeting "at some point," but did not inform them that the meeting was canceled due to lack of quorum or that the meeting start time would be delayed. Tr. 4:18, 5:2-4.

For nearly an hour, the seven DCAB members present heard presentations from its ED and staff, as well as testimony from members of the public. The ED presented on item III, "Courtesy letters to departments and agencies regarding public notice and agenda accessibility issues," a project involving staff and the Chair. During this presentation, the Chair stated to the ED, "I had drafted a letter. Will that letter still go with it? And also, I had suggested that we include a copy of the suggested language, the different formats for the suggested language." Recording at 00:40:41; see also Tr. 16:11-14. The Chair elaborated on the presentation, "so there will be the cover letter explaining that, you know, saying that it was pointed out to us that there are issues. There will be the checklist that specifies what the issues are. Also, a copy of the suggested language in there. From what I understand." Recording at 0045:59; see also Tr. 17: 20-23.

Staff presented on item III, "Submit Testimony Webpage Demonstration," and a board member commented on the presentation and indicated how she would vote:

Actually, I am making a comment to the form that the staff had raised. I technically have no issue with it other than the accessibility and the format chosen. There was a time under the Tech Act that dropdown menus selection was not compliant with ADA for individuals with visual impairment.

Please know, my knowledge may be old as to any updates, but I certainly would like staff to ensure that the format meets the three W. Whatever tech laws that we have to ensure that from the onset of using that form is, it is accessible and usable to people with disabilities [who] are blind in particular. And once that has been done, and maybe it's already been done, but I had heard no comment to it.

² Both Requester and DCAB provided OIP with transcripts of the Meeting. On January 16, 2024, Requester submitted a second transcript with page and line numbers, which is cited in this opinion.

So, I would like the assurance that that format is accessible to people with disabilities, so I don't need an answer right now, but if we're going to vote on it, I would delay my vote until I was assured that it was accessible. I have no comment at this point about the letter.

Recording at 00:48:54; see also Tr. 21: 12-23, 22: 1-3. As part of his public testimony, Requester told DCAB, "If you don't have quorum, you can listen to the testimony, but can't ask questions." Recording at 01:05:29.

Nearly an hour into the meeting, two more members arrived, establishing quorum. Recording at 1:13:21. The Chair announced that the board had achieved quorum and returned to agenda item IV, "Approval of Annual Planning and General Board Meeting Minutes of July 20, 2023[.]" and voted on that matter after receiving public testimony. Tr. 40. DCAB next proceeded to item V, "Executive Director's Report," and discussed his various presentations with quorum. Tr. 42-57. Because one member needed to leave the meeting early, the Chair then announced: "Charlotte does need to leave the meeting, which means we will not have quorum in a few moments. Are there any other items that we need to address that need to be voted on before she leaves?" Recording at 1:42:56; see also Tr. 56: 20-21. DCAB lost quorum shortly thereafter and continued its meeting for another 32 minutes without a quorum of members present. During that last 32 minutes, DCAB once again proceeded to hear presentations from its ED and staff, and testimony from the public, until the meeting adjourned at 1:01 p.m.

On January 16, 2024, Requester appealed to OIP, questioning whether DCAB's discussions without a quorum present at the meeting were permitted under the Sunshine Law.

DISCUSSION

I. A Meeting Cannot Convene Without Quorum.

OIP, *sua sponte*, raises the question of whether DCAB properly convened the Meeting without quorum. The Sunshine Law generally requires a board to hold an open meeting in order to conduct business and make any board action valid.³ OIP Op. Ltr. No. 23-01 at 6; see also HRS § 92-2 (Supp. 2024) (defining "board" as "any agency, board, commission, authority, or committee of the State or its political subdivisions which is created by constitution, statute, rule, or executive order, to have supervision, control, jurisdiction or advisory power over specific matters and

³ Boards may hold a meeting closed to the public if allowed by the state constitution, or if properly convening an executive meeting under sections 92-4 and 92-5, HRS. HRS § 92-3. This appeal does not involve an executive meeting.

which is required to conduct meetings and to take official actions.”); HRS § 92-3 (Supp. 2024) (“[e]very meeting of all boards shall be open to the public.”). Section 92-2, HRS, defines a “meeting” as “the convening of a board for **which a quorum is required** in order to make a decision or to deliberate toward a decision upon a matter.” HRS § 92-2 (2012) (emphasis added). Therefore, quorum is a prerequisite for a valid meeting. *Id.*; OIP Op. Ltr. No. 23-01 at 19, 35. However, as discussed in section III, the Sunshine Law does allow limited permitted interactions between members outside of a meeting without violating the Sunshine Law. HRS § 92-2.5 (Supp. 2024).

In Opinion F23-01, a board convened a meeting with quorum, but lost quorum when a member left during a recess. OIP Op. Ltr. No. F23-01 at 35. OIP opined that when quorum was lost, the meeting ended and “the board members in attendance [were] no longer in a meeting and [could] only discuss items on the agenda to the extent a permitted interaction in section 92-2.5, HRS, [applied] to allow it.” *Id.*

In this appeal, the Chair “call[ed] the meeting to order” at 11:06 a.m. without a quorum of DCAB members present. Tr. 3: 4-15, 3:16 to 6:1. OIP finds that DCAB called the meeting to order with only seven members present, but it needed nine members to establish quorum. By definition, a “meeting” requires a quorum of members to be present. HRS § 92-2. OIP therefore concludes that DCAB violated the Sunshine Law by convening and discussing board business during a purported meeting without a quorum of members present because the gathering did not meet the statutory definition of a “meeting” under section 92-2, HRS.

II. A Board May Not Hold an “Informational Meeting” Without Quorum

OIP, *sua sponte*, raises the question of whether DCAB properly held an “informational meeting” without quorum. OIP previously addressed this issue in Opinion F23-01, where a board held an “informational meeting” because it could not maintain quorum. In that appeal, the board heard testimony and reports followed by discussions, but took no votes. OIP opined that:

The Sunshine Law does not have any provisions allowing an “informational meeting” in which members of a board that fails to meet quorum for a noticed meeting can nonetheless discuss the agenda items without taking action. **If a board does not have a quorum, it cannot hold a meeting regardless of whether the members vote to take any actions.** Further, there is no permitted interaction that allows less than a quorum of members to set up an “informational meeting” in lieu of a regular board meeting.

Instead, the permitted interaction at section 92-2.5(d), HRS, specifically addresses what board members in attendance can do when a meeting must be canceled for lack of quorum.

OIP Op. Ltr. No. F23-01 at 19 (footnote omitted) (emphasis added). OIP noted that “[t]he permitted interaction at section 92-2.5(e), HRS, allows less than a quorum of a board’s members to attend an ‘informational meeting or presentation’ organized by a **different** board or entity” but the meeting cannot be “specifically and exclusively organized for or directed toward members of the board.” *Id.* at 19 n.18. Thus, OIP concluded that section 92-2.5(e), HRS, is clearly inapplicable to a board’s own meeting. *Id.*

Similarly, here, DCAB’s pre-meeting briefing clearly set out its intention to conduct an “informational meeting” and hold off on voting until it reached a window of quorum. Recording at 00:13:40-00:15:15. Based on its review of the recording and transcript, OIP finds that DCAB improperly convened an “informational meeting” and proceeded to hear testimony and reports, followed by board discussion, without quorum. The Sunshine Law does not allow a board to hold a meeting without quorum even for informational purposes, regardless of whether members refrain from decision-making. OIP Op. Ltr. No. F23-01 at 19. OIP therefore concludes that DCAB held an impermissible “informational meeting” without quorum in violation of the Sunshine Law.

III. The Permitted Interaction at Section 92-2.5(d), HRS, Does Not Apply When a Meeting Is Delayed While Waiting for Anticipated Quorum

When quorum cannot be attained at the start of a noticed meeting, a board generally has three options. The first option is for the board to reasonably delay the start of a meeting while waiting to establish quorum, with no business conducted during the delay. However, the delay must not be so long that it substantially deprives the public of access or participation, which would violate the Sunshine Law’s notice requirements in section 92-7, HRS. *See* OIP Op. Ltr. No. 05-11 at 6-7 (opining that when a board “unreasonably departs from the noticed time for a meeting,” substantially depriving public access to and the opportunity to participate in the meeting, this is a violation of the notice provision). During this waiting period, the board may not receive testimony or presentations under section 92-2.5(d), HRS, which only permits such interactions when (1) a meeting is canceled due to lack of quorum, not merely delayed, or (2) a multi-site in-person meeting connected by interactive conference technology must be terminated due to a loss in audio or audiovisual communication, as described in section 92-3.5(c), HRS.

A second option is for the board to cancel the meeting if it does not have quorum at the scheduled start time. In OIP Opinion Letter Number 05-07, OIP opined that when a Sunshine Law requirement is not met, such as proper notice, a

board may either cancel the entire meeting or cancel the inadequately noticed agenda item without calling it up. OIP Op. Ltr. No. 05-07 at 4. OIP recommended noting the cancellation on any agenda copy posted outside the meeting room and announcing it at the start of the meeting without opening the meeting or any items for discussion. Id. Similarly, if quorum is lacking at the start of a meeting, the board can cancel the meeting without taking testimony or presentations under section 92-2.5(d), HRS, as discussed next in option 3. OIP recommends that the board note the cancellation on any copy of the meeting notice posted outside the meeting room, and applicable state or county calendar, and announce the cancellation at the scheduled start time of the meeting without convening the meeting or discussing any items.

A third option is for the board to cancel the meeting due to lack of quorum, but still allow the members present to receive testimony and presentations on agenda items, and ask the testifiers and presenters questions, as permitted under section 92-2.5(d), HRS, when specific conditions are met. In this appeal, DCAB's April 2, 2024, response (Response) acknowledged that it lacked quorum at various times during the Meeting, but argued that it did not violate the Sunshine Law because section 92-2.5(d), HRS, allowed board members to receive testimony and presentations on agenda items when quorum is not met or is lost.

The permitted interaction at section 92-2.5(d), HRS, states:

(d) Board members present at a meeting that **must be canceled for lack of quorum** or terminated pursuant to section 92-3.5(c) may nonetheless receive testimony and presentations on items on the agenda and question the testifiers or presenters; provided that:

- (1) Deliberation or decisionmaking on any item, for which testimony or presentations are received, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the testimony and presentations were received;
- (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
- (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:
 - (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and

- (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

HRS § 92-2.5(d) (emphasis added). As a threshold, this section applies only if either (1) a noticed meeting must be canceled due to lack of quorum; or (2) a noticed, multi-site in-person meeting connected by interactive conference technology must be terminated due to an interruption of audio or audiovisual communication lasting more than 30 minutes, as described in section 92-3.5(c), HRS.⁴ *Id.*; HRS § 92-3.5(c) (Supp. 2024); OIP Op. Ltr. No. F14-02 at 3-4 n.2. In Opinion F23-01, OIP cautioned a board “not to proceed with so-called ‘informational meetings’ when it cannot attain or loses quorum, because the members’ discussions beyond receiving testimony and presentations as permitted under section 92-2.5(d), HRS, are not authorized under the Sunshine Law.” OIP Op. Ltr. No. F23-01 at 20.

In this appeal, DCAB argued that section 92-2.5(d), HRS, applied to parts of the Meeting that lacked quorum, but overlooked the statute’s requirement that the meeting must have been canceled due to lack of quorum. As explained above, DCAB convened its meeting even though it lacked quorum and did not inform the public that the meeting was canceled due to the lack of quorum. Instead, the ED stated that two more members are expected to attend the meeting “at some point,” without informing the public that the meeting could not proceed without quorum. Tr. 4:18, 5:2-4.

OIP notes that the Response included the meeting notice for a subsequent meeting scheduled for April 4, 2024. That notice included the language, “if quorum is not achieved at the beginning of the meeting or quorum is lost, the meeting will be stopped and canceled.” While OIP commends this subsequent measure taken to comply with the Sunshine Law, this language notifying the public that a meeting will be canceled due to a lack of quorum did not appear on the Meeting notice at issue in this appeal. Moreover, OIP notes that DCAB scheduled ten general board meetings during the fiscal year of 2023-2024 and its website indicates that five of those meetings were canceled, but the Meeting at issue in this appeal was not marked as canceled. [DCAB General Meeting Archives](https://health.hawaii.gov/dcab/home/dcab-agendas-and-minutes/dcab-general-meetings/dcab-general-meeting-archives/), Dep’t of Health, Disability and Communication Access Board, <https://health.hawaii.gov/dcab/home/dcab-agendas-and-minutes/dcab-general-meetings/dcab-general-meeting-archives/> (last visited Dec. 19 2025).

Although DCAB’s meeting was canceled as matter of law due to a lack of quorum, OIP finds that DCAB did not consider this meeting to be canceled.

⁴ The Meeting in this appeal was a remote meeting under section 92-3.7, HRS, not a multi-site in-person meeting under section 92-3.5, HRS, and DCAB did not assert that the Meeting was terminated pursuant section 92-3.5(c), HRS.

Instead, OIP finds that DCAB called the meeting to order without quorum and treated the meeting as an “informational meeting,” which is not allowed under the Sunshine Law. OIP further finds that when quorum was achieved, DCAB proceeded to vote on the remaining agenda items. Thus, OIP concludes DCAB’s proceeding without quorum was not authorized by section 92-2.5(d), HRS, and was therefore a discussion of board business outside a meeting in violation of the Sunshine Law.

IV. Under Section 92-2.5(d), HRS, Boards May Only Hear Testimony and Presentations and Ask Testifiers and Presenters Questions

Under section 92-2.5(d), HRS, when a meeting is canceled due to lack of quorum or terminated pursuant to section 92-3.5(c), HRS, the board members present may only “**receive** testimony and presentations on items on the agenda **and question the testifiers or presenters.**” HRS § 92-2.5(d) (emphases added). They are strictly prohibited from “[d]eliberation or decisionmaking” on those items until a subsequent, duly noticed meeting. HRS § 92-2.5(d)(1).

Although the Sunshine Law does not define “deliberation,” the Merriam-Webster Dictionary defines “deliberation” as “the act of thinking about or discussing something and deciding carefully” or “a discussion and consideration by a group of persons (such as a jury or legislature) of the reasons for and against a measure.” Deliberation, Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/deliberation> (last visited on Dec. 19, 2025). Black’s Law Dictionary defines “deliberation” as “[t]he act of carefully considering issues and options before making a decision or taking some action[.]” Deliberation, Black’s Law Dictionary (11th ed. 2019). Legal commentary interprets “deliberation” as “any discussion or communication between or among board members related to reaching a decision on any item that is before the board or commission for action.” Jon M. Van Dyke, Hawaii’s Sunshine Law Compliance Criteria, 26 U. Haw. L. Rev. 21, 24 (2003)

In this appeal, for nearly an hour, less than a quorum of members listened to presentations from staff and to public testimony. OIP finds based on its review of the record that the Chair elaborated on the ED’s presentation of item III, a project that she worked on, and offered suggestions, while another member commented on a presentation without posing a question, and explained how she was inclined to vote. Recording at 00:40:41, 0045:59, 00:48:54; see also Tr. 16:11-14, 17: 20-23, 21: 12-23, 22: 1-3. OIP finds that these comments by the Chair and the board member during the period without quorum were not questions to the testifiers or presenters and entered the realm of deliberation. OIP therefore concludes that their comments exceeded the scope of permissible questioning under section 92-2.5(d), HRS, and constituted deliberation, which is expressly prohibited until a subsequent, properly noticed meeting. Even if DCAB had canceled the Meeting for lack of quorum prior

to hearing from testifiers and presenters, the DCAB members' deliberation on agenda items would still have violated the Sunshine Law because the permitted interaction in section 92-2.5(d), HRS, only allows board members to ask questions of testifiers and presenters and would not authorize deliberation.

V. A Board Cannot Un-cancel a Meeting

OIP, *sua sponte*, raises the question of whether the Sunshine Law permitted DCAB to reconvene a canceled meeting for deliberation and decision making once quorum was achieved. Once DCAB had reached a quorum of members present, after it had been hearing testimony and presentations supposedly under the permitted interaction in section 92-2.5(d), HRS, DCAB proceeded to vote on a decision-making item, item IV, and discuss the ED's report, item V. Later, when quorum was lost again, the remaining members continued to receive testimony and presentations for another 32 minutes until adjournment at 1:01 p.m.

Even if DCAB had announced that the meeting was canceled due to lack of quorum as section 92-2.5(d), HRS, required, DCAB could not then decide to convene the canceled meeting once it achieved quorum, regardless of whether the members present had proceeded to hear testimony and presentations in reliance on the permitted interaction in section 92-2.5(d), HRS. The Sunshine Law requires a board to provide public notice in advance of its meetings. HRS § 92-7 (Supp. 2024). Once a board informs the public that a noticed meeting is canceled, the public is entitled to rely on that information and leave the meeting location without concern that the meeting might still take place. A board's resumption of a canceled meeting would effectively mean the board had rescheduled the meeting for later that same day, with no posted notice, and would violate the Sunshine Law's notice requirements. OIP therefore concludes that the Sunshine Law does not permit a canceled meeting to be un-canceled and resumed for deliberation and decision-making.

Further, when section 92-2.5(d), HRS, is invoked to hear testimony and presentations intended for a meeting that was canceled due to lack of quorum, the board members present must not deliberate or engage in decision making on any items until a subsequent, properly noticed meeting. HRS § 92-2.5(d)(1). The board must also comply with the record keeping and reporting requirements outlined in subsection 92-2.5(d)(2) and (3), HRS, as follows:

- (2) The members present shall create a record of the oral testimony or presentations in the same manner as would be required by section 92-9 for testimony or presentations heard during a meeting of the board; and
- (3) Before its deliberation or decisionmaking at a subsequent meeting, the board shall:

- (A) Provide copies of the testimony and presentations received at the canceled meeting to all members of the board; and
- (B) Receive a report by the members who were present at the canceled or terminated meeting about the testimony and presentations received.

HRS § 92-2.5(d)(2)-(3). This process assumes that once canceled, a meeting remains canceled.

OIP concludes that the Sunshine Law does not authorize a board to cancel a meeting, receive testimony and presentations, and then un-cancel the same meeting for deliberation and decision-making once quorum is achieved. Such an interpretation would violate the notice requirements set out in section 92-7, HRS, and would contradict the plain language of section 92-2.5(d), HRS, which requires that any deliberation or decision-making occur only at a separate, duly noticed meeting held after the meeting at which testimony was received, and specific recordkeeping and reporting requirements be met before any future deliberation. Thus, if DCAB had in fact canceled its meeting for lack of quorum as it should have done for the members present to hear testimony and presentations as a permitted interaction, DCAB still would have violated the Sunshine Law by subsequently considering board business in a meeting that had already been canceled.

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 (2012). 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 decision 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

/s/ Tiara Maumau

Tiara Maumau
Staff Attorney

APPROVED:

/s/ Carlotta Amerino

Carlotta Amerino
Director