LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LIEUTENANT GOVERNOR

STATE OF HAWAII
OFFICE OF THE LIEUTENANT GOVERNOR
OFFICE OF INFORMATION PRACTICES
NO. 1 CAPITOL DISTRICT BUILDING
250 SOUTH HOTEL STREET, SUITE 107
HONOLULU, HAWAI'I 96813
Telephone: (808) 586-1400 FAX: (808) 586-1412
E-MAIL: oip@hawaii.gov
www.hawaii.gov/oip

LESLIE H. KONDO
DIRECTOR

January 19, 2005

Mr. James Gonser
Reporter
The Honolulu Advertiser
305 Kapiolani Boulevard
Honolulu, Hawaii 96801

Mr. Benjamin B. Lee
Managing Director
Office of the Managing Director
City and County of Honolulu
530 South King Street, Room 306
Honolulu, Hawaii 96813

Re: Downtown Homeless Task Force (RFO-P 04-005)

Dear Messrs. Gonser and Lee:

Mr. James Gonser wrote to the Office of Information Practices ("OIP") in April 2004 to request an opinion as to whether part I of chapter 92, Hawaii Revised Statutes, the "Sunshine Law," applied to the Downtown Homeless Task Force of the City and County of Honolulu ("City"). Mr. Gonser stated that he had tried to attend a meeting of the group, but was asked to leave. In response to a request from OIP, Mr. Benjamin B. Lee wrote to OIP on October 28, 2004, providing information about the history and operations of the Downtown Homeless Task Force. OIP's statement of the facts, below, is based on Mr. Lee's letter.

ISSUE PRESENTED

Is the Downtown Homeless Task Force a board subject to the Sunshine Law?

BRIEF ANSWER

No. The Downtown Homeless Task Force does not "take official actions," because it does not create recommendations that are to be acted upon by the City.

See Haw. Rev. Stat. § 92-2(1) (1993). Instead, the members agree on behalf of the various organizations they represent to seek solutions to problems identified by the group. In addition, the group is not "required to conduct meetings" because the group does not need a quorum to reach a decision, so its meetings are not "meetings" as the term is defined in the Sunshine Law. See Haw. Rev. Stat. § 92-2(1) and (3) (1993).

FACTS

I. TASK FORCE FORMATION

In March 2002, the City removed benches that had previously been on Fort Street Mall. As a result of the removal, homeless service providers complained to City that they couldn't find their clients anymore. These complaints spurred the City to convene an "ad hoc committee" to address issues of homelessness.

Mr. Lee first contacted Susan Au Doyle of the Aloha United Way and the Reverend Dan Chun of the First Presbyterian Church of Honolulu. Ms. Au Doyle and Reverend Chun had been participating in the Hawaii Together Task Force convened by then-Governor Benjamin Cayetano and, through that group, knew some advocates and organizations involved in issues of homelessness. Ms. Au Doyle and Reverend Chun suggested some possible members for an ad hoc committee, and the City identified other stakeholders in the issue – businesses, nonprofit organizations, homeless service providers, and agencies of the federal, state, and City governments. Once the potential members were identified, Mr. Lee's office invited them to participate by telephone.

II. TASK FORCE MEMBERSHIP

The group that was formed at Mr. Lee's invitation was called the "Community Approach to Addressing Homelessness on Oahu" and, more recently, the "Downtown Homelessness Task Force" ("Task Force"). It originally had 31 members. Since then, some of the original participants have asked to be removed from the list and others have not responded to notices of upcoming meetings. Approximately speaking, half the Task Force's members represent government agencies, of which half are from assorted City agencies and half from federal or state agencies. One quarter of the members represent homeless service organizations or similar nonprofit organizations; and the remaining quarter represent businesses or other organizations with general concerns about the issue of homelessness (e.g., a downtown theater and a church).

III. MEETING MECHANICS

Although the Task Force had hoped to meet monthly, in practice it has met far less frequently. The group met six times in 2002 (in March, July, August, September, October, and December), once in January 2003, and twice in 2004 (in March and July). As the past meetings reflect, the group has not followed a regular meeting schedule. Future meetings are set up when necessary.

The Task Force does not check for a quorum of members at its meetings, and it does not typically vote to reach decisions. Instead, the group reaches a consensus through facilitated discussion. Ms. Au Doyle and Reverend Chun co-facilitated the Task Force's meetings in 2002 and 2003. For the two meetings in 2004, Reverend Chun dropped out and Mr. Michael Amii, the Director of the City Department of Community Services, took his place as co-facilitator.

The Task Force receives some administrative support from the City in setting up its meetings. Mr. Lee's Executive Assistant/Administrative Assistant notifies the Task Force members of meetings by e-mail (for most), telephone, or mail, and reserves a meeting room in City Hall. Mr. Lee's Assistant also prepares and distributes an "overview report" after each Task Force meeting.

IV. TASK FORCE FUNCTION AND DUTIES

The Task Force was intended to do two things: first, to identify problems resulting from the homeless population, and second, to achieve specific, cooperative solutions to those problems through group members working together and pooling resources. Mr. Lee evidently has tracked the progress of the Task Force and its discussions in the course of providing administrative support for it, and as noted previously approximately one quarter of the Task Force members were from the City (representing five different offices or departments). However, there is no indication that the Task Force was tasked with providing recommendations (such as a proposed policy or projects) for action by a particular City agency, such as the Mayor's office, the City Council, or a particular City Department.

The actions taken by the Task Force have been consistent with the group's intent. The Task Force members agreed to try to do something for homeless in Ala Moana to Iwilei area, as most complaint calls to the City are associated with the Downtown/Fort Street Mall homeless population. The members identified three needs in that area, for which they agreed to find solutions: (1) availability of restroom facilities, (2) a drop-in center for the homeless to seek services, and (3) office space for health care providers servicing the homeless.

DISCUSSION

To come within the jurisdiction of the Sunshine Law, a group must satisfy each of five elements. OIP Op. Ltr. 01-01 at 11 (April 6, 2001). A board must be:

> (1) an agency, board, commission, authority, or committee of the State or its political subdivisions; (2) which is created by constitution, statute, rule, or executive order; (3) to have supervision, control, jurisdiction, or advisory power over specific matters; (4) which is required to conduct meetings; and (5) which is required to take official actions.

Id. The City argues that the Task Force is not a board for purposes of the Sunshine Law because: (1) the Task Force was not created by constitution, statute, rule, executive order; (2) the Task Force was not expressly required to meet; and (3) the Task Force was not expressly required to take official actions.

I. OFFICIAL ACTIONS

In determining whether a group takes official actions, OIP looks to governmental expectations for the group and to what the group actually does. For instance, in OIP Opinion Letter Number 01-01, OIP concluded that Vision Teams took official actions because they were established by the City to make, and did make, capitol improvement recommendations that the City then acted on. OIP Op. Ltr. No. 01-01 at 22-23 (April 6, 2001). The Task Force, by contrast, was not created with the intent that it have advisory power over specific City matters, but instead has acted as a forum for representatives of the City, the state and federal governments, and private organizations to cooperatively address an issue of common concern.

The Task Force does not, as a body, provide recommendations to the City for implementation by the City. Instead, its members agree to find solutions to the issues identified by group consensus and to cooperate with other members to implement solutions. Each organization that is represented in the Task Force's membership is expected to find its own way to contribute to solving the problems identified by the Task Force. It is true that some Task Force members represent City departments, which would then be expected to take some sort of appropriate action based on the issues identified by the Task Force. However, the majority of the Task Force members are not from the City.

The Task Force's function and actions may be distinguished from those of the Vision Teams at issue in OIP Opinion Letter Number 01-01. The Vision Teams involved citizens from various backgrounds coming together as a group to make

recommendations to the City administration, which was then expected to (and did) consider and act on the recommendations. The members brought their individual backgrounds and viewpoints to the table to contribute to making recommendations, but were not acting on their own behalf or as representatives of other organizations they might be connected to in the sense of agreeing to take some sort of action themselves. In this situation, by contrast, the members participated as representatives of their various organizations, who were agreeing on behalf of their organizations to take cooperative action toward solving problems that the group identified. They were not merely contributing their knowledge to help the City create a sound policy, but instead were expected to take action themselves to resolve the problems identified by the group.

Thus, OIP concludes that the Task Force did not take "official action" because it identified problems for each of its members to act on (including members representing the City), rather than presenting a recommended course of action to the City. The Task Force was a mechanism for enhancing the cooperation between the City, the federal and state governments, and various private organizations, rather than an advisory body charged with developing recommendations for the City alone to implement.

II. REQUIRED TO CONDUCT MEETINGS

The City relies on the lack of an express requirement for the Task Force to hold meetings for its conclusion that the Task Force did not meet the "required to conduct meetings" element of a board. A group need not be expressly required to meet for this test to be met: the fact that it does, in fact, meet, is enough. OIP Op. Ltr. No. 01-01 at 16-22 (April 6, 2001). However, the term "meeting" has a specific definition in the Sunshine Law. A "meeting" is:

> [T]he convening of a board **for which a quorum is required** in order to make a decision or deliberate toward a decision. . . .

Haw. Rev. Stat. § 92-2(3) (1993). The Task Force does not check for a quorum of its membership before meeting, even though the Task Force has a fixed membership and it could be readily determined whether a quorum of the membership was present.[1] The Task Force's lack of concern about quorum is consistent with the fact

[1] In OIP Opinion Letter Number 01-01, OIP found that the Vision Teams were a board for which quorum was required even though they did not routinely check for quorum before meeting. OIP Op. Ltr. No. 01-01 at 16-22 (April 6, 2001). That result was based on the peculiar nature of Vision Team membership: the Vision Teams treated everyone who showed up at a particular meeting as members for the purpose of that meeting, and deliberated and made decisions based on the majority vote of those present. Id. Based on the Vision Teams' own meeting procedures, OIP concluded that the default quorum requirement of section 92-15, Hawaii Revised Statutes, applied to them. Id.

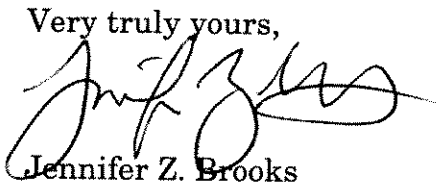
that it typically reaches its decisions by consensus rather than a majority vote of members attending a meeting. OIP concludes that the Task Force is not a board for which quorum is required to make or deliberate toward a decision. Thus, OIP further finds that the Task Force does not hold "meetings" as that term is defined in the Sunshine Law.[2]

CONCLUSION

The Task Force does not "take official actions," because it does not create recommendations that are to be acted upon by the City. See Haw. Rev. Stat. § 92-2(1) (1993). Instead, the members agree on behalf of the various organizations they represent to seek solutions to problems identified by the group. In addition, the group is not "required to conduct meetings" because the group does not need a quorum to reach a decision, so its meetings are not "meetings" as the term is defined in the Sunshine Law. See Haw. Rev. Stat. § 92-2(1) and (3) (1993). Because the Task Force does not meet at least two of the five elements of the Sunshine Law's definition of a board, OIP concludes that the Task Force is not a board subject to the Sunshine Law.

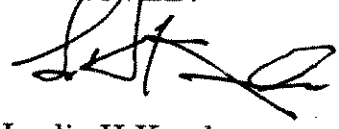
If you have further questions about this matter or the Sunshine Law in general, please do not hesitate to contact OIP.

Very truly yours,



Jennifer Z. Brooks
Staff Attorney

APPROVED:



Leslie H.Kondo
Director

JZB:os

---

[2] Because OIP has already concluded that the Task Force does not meet two elements of the Sunshine Law's definition of a board (it is not required to meet and is not required to take official actions), OIP does not need to consider the City's argument that the Task Force was not expressly created by constitution, statute, rule, or executive order.