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

OPINION

Requester: The County Clerk
County of Hawaii
Date: August 21, 2006
Subject: Meeting Notice Filing Requirement (S RFO-G 07-34)

REQUEST FOR OPINION

Requester seeks an advisory opinion regarding application of the six day filing requirement for board meeting notices under part I of chapter 92, Hawaii Revised Statutes ("HRS") (the "Sunshine Law").

QUESTION PRESENTED

Whether the Sunshine Law allows the filing of a meeting notice with the office of the lieutenant governor (for state boards) or the appropriate county clerk's office (for county boards) after normal business hours on the sixth day prior to the meeting for which the notice is being filed.

BRIEF ANSWER

Yes. Because a calendar day under the Sunshine Law should be construed to extend until 12:00 a.m., the statute allows a meeting notice to be filed until midnight on the sixth calendar day prior to the meeting for which it is being filed. However, whether the appropriate government office will accept the notice for filing until midnight is a policy question outside the purview of this office: Each office may adopt its own procedures for filing, which may include procedures to allow boards to file their notices after the office's normal business hours.

FACTS

Requester asked for this advisory opinion after OIP's issuance of OIP Opinion Letter Number 06-05, which involved the Hawaii County Council's amendment of a meeting agenda in accordance with a request made by the Office of the Corporation Counsel. In that opinion, OIP had suggested that to avoid the amendment requirements, the Council should have filed a new agenda because the request had been made six days in advance of the meeting.

From Requester's letter to OIP dated July 23, 2006, OIP understands that the request to amend was made **after** 4:30 p.m. on that sixth day prior to the meeting in question, meaning that any new agenda could only have been created and filed after 4:30 p.m. on that day. Because the normal close of business of the Hawaii County Clerk's office is 4:30 p.m., Requester asked whether the Council could have filed a new agenda under the Sunshine Law.

DISCUSSION

The Sunshine Law requires a board to file a written public notice[1] of any meeting in the office of the lieutenant governor (for state boards) or the appropriate county clerk's office (for county boards) and in the board's office "at least six calendar days before the meeting." Haw. Rev. Stat. § 92-7(b) (Supp. 2005). Under the Sunshine Law, the six calendar day period should be calculated in days rather than in hours. See Op. Att'y Gen. No. 92-06 (1992).[2] In its opinion interpreting section 92-7, the Attorney General relied in part on the Hawaii Supreme Court's interpretation of "day" to include "the time elapsing from one midnight to the succeeding one[.]" Id. at 3 (quoting Formin v. Mengel, 38 Haw. 443, 444 (1949)).

Recently, the Hawaii Supreme Court has again construed "day" in the context of a notice period to allow filing of a notice until 12:00 a.m. on the last day of that notice period. See Hanabusa v. Lingle, 105 Haw. 28, 93 P.3d 670 (2004). Specifically, the Court held in Hanabusa that, in the absence of any time restriction on the word "day," the governor had up to midnight on the tenth day of the ten day notice period to give notice to the legislature of the governor's intent to return bills with objections. Hanabusa, 105 Haw. at 33, 93 P.3d at 673 (citing Formin, 38 Haw. at 444-45) ("noting that, when a person is required to perform an act within a given number of days, the act must occur at any time prior to midnight of the relevant day").

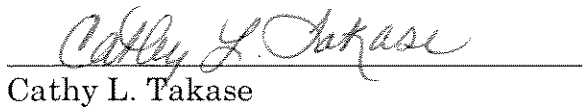
---

[1] The notice required to be filed under the Sunshine Law includes an agenda. Haw. Rev. Stat. § 92-7(a) (Supp. 2005).

[2] The Office of the Attorney General (the "Attorney General") was charged with administration of the Sunshine Law from 1975 through 1998.

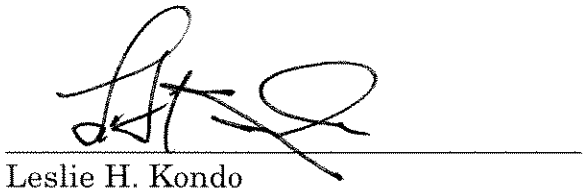
Section 92-7 likewise contains no time restriction on its six calendar day notice requirement. OIP therefore concludes that notice under that provision may be accepted for filing by the appropriate government office until midnight of the sixth day prior to the meeting for which the notice is being filed. Whether the state and county offices receiving notices for filing choose to accept filings after the respective offices' standard business hours, however, depends upon the policies set by each office. Each office may establish its own procedures for the filing of notices, and those procedures may (but are not required to) allow boards to file their notices after the office's normal business hours.[3]

OFFICE OF INFORMATION PRACTICES



Cathy L. Takase
Staff Attorney

APPROVED:



Leslie H. Kondo
Director

---

[3] As discussed with Requester, the County Clerk's office could provide that, after normal business hours, a notice (and agenda) will be accepted as filed on a given day where it is transmitted in a manner that allows documentation of its receipt by the County Clerk's office before 12:00 a.m. on that day, such as via e-mail or facsimile to the County Clerk's office.