

Text of letter sent to Judge Victoria Marks, Chairperson, State of Hawaii 2011 Reapportionment Commission on July 11, 2010 by Disappeared News

Subj: **Query re Technical Committee**

Dear Judge Marks:

I support the public's interest in having maximum transparency in the process of developing and adopting the 2011 reapportionment plan and compliance with the Sunshine Law. I would like to inquire into two matters involving the Technical Committee, which the Commission established on May 4, 2011, as follows:

A. Is the Committee intended to be an investigative, Permitted Interaction Group (PIG) pursuant to HRS §92-2.5(b)(1)?

B. What legal authority allows the Committee to draw new district maps as a PIG?

These questions are explained below, along with my views on the situations involved.

A. Is the Technical Committee intended to be an investigative, permitted interaction group (PIG) pursuant to HRS §92-2.5(b)(1)?

Although the motion relating to how the Committee would operate, adopted at its June 14 meeting, does not explicitly state so, it appears the Commission intended the Committee to function pursuant to HRS §92-2.5(b)(1). Reference to HRS §92-2.5(b) on permitted interactions prior to the motion, and the motion to assign the Committee to investigate the redistricting of state and federal legislative districts, suggest this intent. While I might disagree with the motion, I agree it is necessary because the motion establishing the Committee made it subject to the Sunshine Law. Because of the Sunshine Law's presumption for open meetings, the Commission might consider approving a motion to explicitly make the Technical Committee a PIG pursuant to HRS §92-2.5(b)(1).

At the June 14 meeting there was no reference to the agenda item under which the motion on the Technical Committee was made. The most relevant agenda item appears to be "VIII. Discussion and action, if appropriate, on status of work for Technical Committee" (of June 9 agenda), but it is uncertain that a motion on how the committee operates is

appropriate under item VIII. I believe the public could reasonably expect that this item might include actions related to the work of the Committee, but not necessarily how it operates. I note that HRS §92-7(d) allows a board to amend its agenda by 2/3rds vote, but not if "it is of reasonably major importance and action...will affect a significant number of persons." If the June 14 motion was intended to make the Committee a permitted interactions PIG, I believe the action would significantly affect the public because it would change the status of the public's access to its meetings -- from open to closed. For these reasons, the Commission might consider voting again on the motion at a future meeting.

B. What legal authority allows the Technical Committee to draw new district maps as a PIG?

Commission discussions appear to indicate that the Committee's assignment is to draw up maps for federal and state legislative districts for recommendation to the Commission, though the June 14th motion references a Committee of the Whole that has not yet been established. Assuming the Committee is a PIG assigned to investigate the redistricting of state and federal legislative districts, it appears that HRS §92-2.5(b)(1)(C) prohibits deliberation on the matter investigated, except at a full Commission meeting. This section allows PIGs to investigate, provided that: "Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board". I would like to ask if the Commission has another interpretation of HRS §92-2.5(b)(1)(C), or another section of the law, that would allow the Technical Committee to draw new district maps.

I note that HRS §92-2.5(b)(2) could be cited as a legal authority to draw district maps without the presence of the public, but I understand this sub-section was intended for negotiations with external entities. This section allows PIGs to: "Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation." Even without legal authority allowing the PIG to deliberate or negotiate on the matter investigated, I believe the Committee could be authorized to draw new district maps, if the Commission established it as a regular committee—not a PIG, and not exempted from open meeting requirements.

I appreciate the Commission's concerns about the burden that the Technical Committee might encounter if the public were allowed to attend its meetings. My intent is to encourage as much transparency in the reapportionment process as possible, while still supporting the Commission's mandate to approve a new reapportionment plan by the constitutionally established deadlines. I hope this communication will lead to clarification of the Commission's powers and procedures regarding the Technical Committee, and look forward to your response. I also encourage you to consult with the Office of Information Practices on the questions raised above.

Sincerely,
Larry Geller

Reference:

HRS §92-1(2) states "The provisions requiring open meetings shall be liberally construed; and HRS §92-1(3) states "The provisions providing for exceptions to the open meeting requirements shall be strictly construed against closed meetings."

HRS §92-2.5(b) states: "Two or more members of a board, but less than the number of members which would constitute a quorum for the board, may be assigned to:

(1) Investigate a matter relating to the official business of their board; provided that:

(A) The scope of the investigation and the scope of each member's authority are defined at a meeting of the board;

(B) All resulting findings and recommendations are presented to the board at a meeting of the board; and

(C) Deliberation and decisionmaking on the matter investigated, if any, occurs only at a duly noticed meeting of the board held subsequent to the meeting at which the findings and recommendations of the investigation were presented to the board; or

(2) Present, discuss, or negotiate any position which the board has adopted at a meeting of the board; provided that the assignment is made and the scope of each member's authority is defined at a meeting of the board prior to the presentation, discussion or negotiation."

HRS §92-7(d) No board shall change the agenda, once filed, by adding items thereto without a two-thirds recorded vote of all members to which the board is entitled; provided that no item shall be added to the agenda if it is of reasonably major importance and action thereon by the board will affect a significant number of persons. Items of reasonably major importance not decided at a scheduled meeting shall be considered only at a meeting continued to a reasonable day and time.