

Walter Heen

From: Jennifer.Z.Brooks@hawaii.gov
Sent: Friday, April 13, 2007 2:40 PM
To: Walter Heen
Subject: Ka Aha Pono Conference

Judge Heen,

Thank you for your e-mails regarding the Ka Aha Pono Conference. I've reviewed the materials you sent us and it appears that the topic the panelists are being asked to address is precisely what the Commission on Bio-Prospecting is charged with considering. Specifically, I note the portion of "Confirmation on Ka Aha Pono Conference" that states:

Panelists are asked to address the mandate of HCR 193 -- recommendations for State Policy development in the area of:

- 1) Prior informed consent;
- 2) Equitable benefit sharing;
- 3) Bio-safety protocols;
- 4) A permitting and licensing process; and
- 5) Cultural rights for the use of Hawaii's biodiversity.

In addition, the e-mail dated February 22, 2007, tells the panelists, "We are hoping that you will be able not only to advance the perspective of your discipline or community, but that you will be able to propose or discuss methods, processes or procedures that might be utilized in our State to ensure that Hawaii's Traditional Knowledge and our cultural heritage will not be diminished or threatened by bio-technology."

Putting these requests together, it appears that each panelist is asked to propose specific methods, processes or procedures relating to informed consent, benefit sharing, safety protocols, permitting, and cultural rights. In the absence of an applicable permitted interaction, such a discussion among five Commission members would violate the Sunshine Law, part I of chapter 92, HRS.

However, it may be possible for the Commission members to act as panelists under one of the Sunshine Law's permitted interactions. Section 92-2.5(b), HRS, provides that:

(b) 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.

The Commission, at a regular meeting, could assign the panel members (and additional members, so long as the total was less than a quorum) to investigate the views and ideas of Ka Aha Pono Conference participants on the

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subject of bioprospecting. The assigned investigative task force members could then attend the conference, discuss bioprospecting with the conference participants and each other, and prepare a report to the Commission on the conference and the views and ideas expressed there. The Commission would receive the report at a noticed Commission meeting but not discuss it or act on it until a subsequent meeting.

I note that the panel discussion is set for April 20. Since the Sunshine Law requires that a notice of meeting be filed 6 days prior to the meeting, the Commission would need to file a notice of meeting today with this matter (Ka Aha Pono Conference) on the agenda in order to meet April 19 and assign task force members. (The notice is counted in calendar days, not by hour, so a notice filed in the late afternoon 6 days prior to a morning meeting is fine.) The task force members would not need to file any sort of notice prior to attending the panel discussion on April 20, because their discussions would be part of a permitted interaction and thus legally taking place outside a meeting.

I hope this advice is helpful. If you have further questions, please do not hesitate to contact me. My direct line is 586-1406.

Aloha,

Jennifer Brooks

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