



DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

November 7, 2008

Paul van Donkelaar, President
University Senate
348A Gerlinger Hall
1240 University of Oregon
Eugene, OR 97403-1240

Re: University Assembly

Dear President van Donkelaar:

On behalf of the University Senate, your predecessor, Gordon Sayre, inquired about the quorum and voting requirements applicable to the University Assembly ("Assembly"), a group at the University of Oregon ("UO" or "University"). Below we set forth the University Senate's question and our short answer, followed by a discussion.

QUESTION

Can the Assembly, consisting of approximately two thousand members, exercise its legislative power by affirmative vote of a majority of those attending a meeting, provided that the number attending is at least one person more than fifty percent of the total membership?

SHORT ANSWER

Subject to certain conditions, the Assembly may pass a motion on a matter arising under ORS 352.010 by an affirmative vote of a majority of its members present at a proper meeting, even if less than fifty percent of the total membership is present. The conditions are that the professors and President of the University, acting collectively as the faculty, must authorize the Assembly to exercise the faculty's ORS 352.010 powers and not impose differing quorum or voting requirements on the Assembly. This conclusion is not free from all doubt, however.

DISCUSSION

1. Introduction.

The University Senate's question requires us to deal with several sources of factual and legal tensions, including:

- While the University Senate and Assembly purport to be "faculty governance" bodies, each includes non-faculty members.

- One statute provides that the University's President and professors are the "faculty" of the University and shall "have the immediate government and discipline of it and the students therein[,]" ORS 352.010. But another, ORS 351.070(4)(b), gives some institutional government power to the State Board of Higher Education (the "Board"): "Subject to such delegation as the board may decide to make," the Board has authority to "adopt rules and bylaws for the government [of each institution], including the faculty, teachers, students and employees therein[,]." And a further statute, ORS 352.004, designates the University President as the "president of the faculty" and "the executive and governing officer of the institution, except as otherwise provided by statute[,]" * * * with authority to control and give general directions to the practical affairs of the institution."^{1/}
- A Board Internal Management Directive (IMD) 1.123 (Internal Governance and Authority over the Faculty) does not mention or distinguish between these varying potential sources of University governance authority, provides for a presidential veto over faculty decisions, and declares, in a somewhat circular manner, that an institution may formulate a statement of internal governance which "shall be ratified as the official statement of internal governance by those included in the internal governance structure of the institution and by the President."
- The Department of Justice has provided prior advice to the University that assumed, but did not analyze in depth, that a general quorum and voting statute, ORS 174.130 ("[a]ny authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law"), applies to the Assembly.
- For over thirty years, the Department of Justice has interpreted ORS 174.130 as requiring a majority of the members of a subject public body not only to be present but also to vote in favor of any motion in order for it to pass. If applicable to the Assembly, this means that a majority of the Assembly would have to vote in favor of a proposal in order for it to be adopted.

As explained below, after an analysis of the history of both ORS 174.130 and ORS 352.010, we conclude that ORS 174.130 does not apply to the faculty's exercise of governance powers conferred by ORS 352.010. Consequently, the University's professors and President may exercise the faculty's ORS 352.010 powers under the common law rule applicable to groups of an indefinite size that permits a majority of those present at a proper meeting to approve a motion.

We further conclude that the faculty may delegate the exercise of their ORS 352.010 powers to the Assembly. And, provided the faculty does not impose differing requirements on the Assembly, the Assembly may exercise that delegated authority and pass a motion under the same common voting rule that applies to the faculty.

Finally, we conclude that, while the Board's IMD on institutions' internal governance sets parameters and procedures for the operation of the University's "internal governance structure," the faculty's statutory role in the University's "immediate government" remains effective. In order to reconcile any potential tension between the governance bodies authorized by IMD 1.123 and ORS 352.010, the faculty may recommence meeting periodically as a body distinct from the Assembly, even if only for the purpose of delegating their powers to the Assembly or to consider whether to reclaim those powers. The University's statement of internal governance could be amended to recognize this role of the statutory faculty.

We stress that our discussion is narrowly addressed to the quorum requirements applicable to the faculty and the Assembly. It should not be understood to address the scope of the faculty's power or the relationship of that power to the authority of the Board or the President, except as the discussion directly pertains to the underlying question of how the faculty properly exercises whatever power they may possess.

2. Assembly's Membership and Powers under Enabling Legislation.

Since January 1, 1996, the Assembly has been "composed of all University of Oregon officers of instruction, librarians, officers of administration" and a fixed number of students.^{2/} Enabling Legislation, Legislative Governance Structure Pertaining to the University of Oregon passed by the University Assembly on May 17, 1995 ("Enabling Legislation") <http://darkwing.uoregon.edu/~uosenate/dirsen990/SenateCharterold.html> (accessed May 22, 2008). While section 2.1 of the Enabling Legislation declares that "the University Senate shall be sole governing body of the University in all matters of faculty governance[.]" the Assembly retains certain "legislative powers" under that legislation.

Specifically, section 6.6 of the 1995 Enabling Legislation^{3/} provides:

The University Assembly, with full legislative power, shall be convened by an affirmative vote of the University Senate or after a petition to so convene has been signed by 33 % of those eligible to vote for non student senators.

While the term "full legislative power" is not defined by the Enabling Legislation, we believe that it likely is intended to encompass "matters of faculty governance" over which the University Senate^{4/} exercises authority under the Enabling Legislation.

3. ORS 174.130 and the Faculty.

a. Statutory interpretation generally.

The applicability of ORS 174.130 to the Assembly is a question of statutory interpretation. As such, we apply the method of statutory analysis prescribed by the Oregon Supreme Court in the case of *Portland General Electric Co. v. Bureau of Labor & Industries*, 317 Or 606, 859 P 2d 1143 (1993) ("*PGE*"). The goal is to give effect to the intent of the legislature that enacted the statute. The words of the statute, considered in their context, are the best measure of that intent. Words of ordinary usage are given their plain meaning, while specialized terms or statutorily defined terms are interpreted accordingly. If, and only if, the

language and context of the statute yield more than one plausible interpretation, legislative history is consulted to determine legislative intent. Should legislative history prove inconclusive or lacking, we employ various court-developed maxims of statutory interpretation to ascribe meaning to the text. See *Carrigan v. State Farm Mutual Auto Insurance Co.*, 326 Or 97, 101, 949 P2d 705 (1997) (describing *PGE* template).

b. Origin and evolution of ORS 174.130 and ORS 352.010.

We assume for purposes of this discussion that the University intends the Assembly to exercise the authority statutorily conferred on the faculty and only that authority. We therefore discuss the relationship between ORS 174.130 and the authority of the faculty. As “the history of the evolution of the statutory wording over time” is important context that necessarily frames our statutory analysis, *Mabon v. Wilson*, 340 Or 385, 389, 133 P3d 899 (2006), we examine the changes, if any, in those statutes over the years.

Current ORS 174.130 can be traced back to the Legislative Assembly’s Act of October 11, 1862. The statute was not changed significantly until 1951. As noted above, current ORS 352.010 dates to an Act of October 21, 1876, “to provide for the support and government of the university of Oregon.” It has not changed in any way material to the current discussion.

To account for this history, our analysis divides the question of legislative intent into two subparts. First, when the legislature in 1876 originally enacted the law that is now ORS 352.010, did the legislature intend the faculty to be governed by the predecessor to ORS 174.130? Second, when the legislature in 1951 enacted the present version of ORS 174.130, did the legislature intend to include the faculty within the statute’s coverage? We answer these questions using the *PGE* methodology.

c. The 1876 legislature did not intend to subject the faculty to ORS 174.130’s predecessor.

On October 21, 1876, Governor Grover LaFayette signed into law “An Act to provide for the Support and Government of the University of Oregon.” Among its provisions was section 14, which provided:

The president and the professors constitute the faculty of the university, and, as such, shall have the immediate government and discipline of it and the students therein; but in all matters connected with the government and discipline of the preparatory department, the teachers therein shall be heard and consulted. The faculty shall also have power, subject to the supervision of the board of regents, to prescribe the course of study to be pursued in the university, and the text-books to be used.

Or Laws, 1876. At that time, the predecessor to ORS 174.130 provided:

Whenever there is more than one referee, all must meet, but a majority of them may do any act which might be done by all, and whenever any authority is

conferred upon three or more persons, it may be exercised by a majority of them, upon the meeting of all, unless expressly otherwise provided.

General Laws of Oregon § 509 (Deady 1866).

For ease of reference, we refer to each of these statutes as they existed prior to 1951 by citation to their section number in the Oregon Codified Laws Annotated (OCLA) (1940) then in effect. The provision regarding the exercise of authority by referees and others appeared at OCLA § 5-609; the provision enumerating the powers of the faculty was at OCLA § 111-3804.

Analyzing the text of the pertinent statutes in context, we conclude that the legislature did not intend for faculty governance under OCLA § 111-3804 to be governed by the rule of OCLA § 5-609. The reason for this conclusion is that, prior to its amendment in 1951, section 5-609 was a rule of civil procedure and applied only to civil legal proceedings. The text of the statute itself suggests this result through its reference to referees. Referees were individuals appointed by the court to exercise various powers in civil proceedings. *See* OCLA § 5-601 (1940) (setting out various permissible roles of referees).

What this text suggests, its context confirms. The provision compiled at OCLA § 5-609 was originally signed into law on October 11, 1862, as part of “An Act to Provide a Code of Civil Procedure.” In the original enactment, it appeared in Chapter VI at section 509. Surrounding provisions simultaneously enacted provide useful context for our interpretive task. *See State v. Carr*, 319 Or 408, 411-412, 877 P2d 1192 (1994) (“Context includes other related statutes”). Section 502 of Chapter VI recited, “The provisions of this chapter shall apply to the proceedings in both actions and suits, except as herein otherwise or specially provided.” This context indicates that OCLA § 5-609 was a rule of civil procedure applicable in suits and actions. Therefore, it would not have governed the faculty’s exercise of its authority under OCLA § 111-3804 when the legislature created that authority in 1876.

d. The 1951 legislature did not intend *current* ORS 174.130 to apply to the faculty.

(1) Text and context.

House Bill 549 (1951) split former OCLA § 5-609 into two statutes, as follows:

Section 1. Whenever any authority is conferred by law upon three or more persons, it may be exercised by a majority of them, unless expressly otherwise provided by law.

Section 2. Section 5-609, O.C.L.A., is amended to read as follows:
Sec. 5-609. Whenever there is more than one referee, all must meet, but a majority of them may do any act which might be done by all.

Or Laws 1951, ch 303. The second section of HB 549 (1951) essentially was a continuation of the previous version of OCLA § 5-609 governing civil procedure. The first section established a

wholly new rule of law. It was codified at ORS 174.130 when the Oregon Revised Statutes were adopted in 1953 and has not been amended since.

Given our conclusion that the legislature had not intended previously to subject the faculty's authority under OCLA § 111-3804 to the rule of OCLA §6-509, we must determine whether *current* ORS 174.130 indicates an intent on the part of the 1951 legislature to bring the faculty and similar groups under the statute's rule. Although not free from doubt, we conclude that the legislature did not so intend, as explained below.

Once again, our analysis begins by considering the text of the relevant statute in context, as required by *PGE*. As previously indicated, ORS 174.130 provides that "[a]ny authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law." To determine whether this statute applies to the faculty, we must resolve three questions. First, does some law confer authority on the faculty? Second, if authority is conferred, is it conferred "upon three or more persons"? Third, does law "expressly otherwise provide[]" for governance of the faculty? Because we find that faculty authority under ORS 352.010 does not appear to be "conferred by law upon three or more persons," we focus on the second question.

At first blush, it seems obvious that the faculty consists of far more than three persons. However, it is significant that ORS 352.010 would confer identical authority on the faculty if it were a group of one or two. Thus, although there are indeed three or more faculty members, those members do not exercise "authority conferred by law upon three or more persons." Instead, they exercise authority "conferred by law upon" one, two, three, or three thousand faculty members.⁵¹ A public governing body with no fixed requirements as to size is unusual in Oregon.

The Board, by contrast, is "a board of 12 directors." ORS 351.010. Among numerous other examples of fixed-size entities are the Oregon Economic and Community Development Commission, ORS 285A.040 ("There is established the Oregon Economic and Community Development Commission consisting of nine members"); the Racing Commission, ORS 462.210 ("There is created the Oregon Racing Commission to consist of five commissioners"); the Fish and Wildlife Commission, ORS 496.090 ("There is established a State Fish and Wildlife Commission that shall consist of seven members"); and the Board of Accountancy, ORS 673.410 ("There is created an Oregon Board of Accountancy consisting of seven members"). Because ORS 352.010 conveys authority that could properly be exercised by a theoretical group of less than three, we are not convinced that ORS 174.130 on its face applies to the faculty.

Context also suggests that ORS 174.130 does not apply to the faculty. One contextual indicator is the common law, which speaks to quorum and voting rules for governing bodies. See *Coley v. Morrow*, 183 Or App 426, 432, 52 P3d 1090 (2002) ("in the context of the preexisting common law, the statutory text incorporates [a common law] rule" under the circumstances of the case).

For bodies with a fixed membership, the common law provides that a majority of the members constitute a quorum, and a majority of the quorum can decide a question:

Following the rule of the common law, in the absence of applicable charter or statutory provision to the contrary, a majority of the definite body * * * consisting of a definite number, when duly met, constitute a quorum for the transaction of business, and the vote of a majority of those present (there being a quorum) is all that is requisite for [action].

McQuillen, *THE LAW OF MUNICIPAL CORPORATIONS* (Third Ed. 2002) § 13.27, p. 872. For over thirty years, we have consistently interpreted ORS 174.130 to modify this common law rule by requiring that a governing body obtain the affirmative vote of a majority of its members in order to act, unless another statute explicitly provides a different rule. *See* 36 Op Atty Gen 960 (1974); 38 Op Atty Gen 1935 (1978); 38 Op Atty Gen 1995 (1978); Letter of Advice dated April 9, 1986 to William H. Young, Director, Water Resources Department (OP-5969); Letter of Advice dated January 16, 1985 to Jeffrey Milligan, Executive Director, Juvenile Services Commission (OP-5763); and Letter of Advice dated August 13, 1979 to Melvin Cleveland, Chairman, Employment Relations Board (OP-4743).

In contrast, the common law rule with respect to bodies with no fixed requirement as to size is that action can be taken following the vote of a majority of those present at a proper meeting. To distinguish such bodies from bodies “of a definite number[.]” McQuillen § 13.27, and for sake of consistency with common law authorities, we will refer to the composition of these bodies as “indefinite,” although we recognize that such bodies will have a determinable number of constituents at any given point in time.

The common law rule regarding these “indefinite bodies,” and authorities supporting that rule, are discussed at some length in *E.B. & A.C. Whiting Co. et al. v. City of Burlington*, 175 A 35, 40-41 (Vermont, 1934) (quoting with approval 2 KENT’S COMMENTARIES, 293), as follows:

[T]he acts of the majority in cases within the charter powers, bind the whole. The majority here means the major part of those who are present at a regular corporate meeting. There is a distinction taken between a corporate act to be done by a select and definite body, as by a board of directors, and one to be performed by the constituent members. In the latter case, a majority of those who appear may act.

To similar effect, the court cites 1 BLACKSTONE COMMENTARIES, 478, “In aggregate corporations, also, the act of the major part is esteemed to be the act of the whole * * *. [W]ith us, any majority is sufficient to determine the act of the whole body.” *Id.* At 40. Paraphrasing 2 DILLON ON MUNICIPAL CORPORATIONS § 520, the court states that in such cases “if the meeting has been duly called and warned, those who assemble, though less than a majority of the whole, have the power to act and bind the whole.” *Id.* at 40. Finally, the court quotes *Field v. Field*, 9 Wend. 394, 403 (NY 1832): “The rule of the common law is, where a society or corporation are composed of an indefinite number of persons, a majority of those who appear at a regular meeting of the same, constitute a body competent to transact business.” *Id.* at 41.

The Supreme Court of Minnesota similarly characterizes the applicable common law rule:

[T]he common law rule is that such of the shareholders as actually assemble at a properly convened meeting, although a minority of the whole number, and representing only a minority of the stock, constitute a quorum for the transaction of business and may express the corporate will, and the body will be bound by their acts. * * * The contention * * * that this rule applies only to such organizations as towns, churches, and the like * * * finds no support either in reason or authority. The correct distinction is between a corporate act to be done by a select body, of definite number, as for example, a board of directors or trustees, and one to be performed by the constituent members of the corporation. In the latter case, a majority of those who appear may act.

Ashley C. Morril v. Little Falls Manufacturing Co. et al., 55 NW 547, 549 (Minnesota 1893).

The differing treatment at common law of bodies with a definite number of members and bodies with indefinite memberships increases our doubt that the 1951 legislature intended *current* ORS 174.130 to apply to bodies of indefinite size. The separate rule for indefinite bodies recognizes the difficulties of applying inflexible quorum and voting requirements to potentially large bodies with readily changeable constituents, and adapts itself accordingly. That flexibility would be lost through application of the common law rule governing fixed bodies. Applying the even stricter rule of ORS 174.130, as it has been consistently interpreted by our office (requiring a majority of the membership to approve an action), would more severely exacerbate the inherent difficulties of effective action by a body of indefinite composition.

The textual description of the authority conferred upon the faculty further suggests that, at least with respect to the faculty, the 1951 legislature probably did not intend such a radical departure from the common law. Notably, a significant component of the authority conferred in 1876 upon the faculty is “the *immediate* government and discipline of [the institution] and the students therein.” A dictionary in use in 1876, WEBSTER’S AMERICAN DICTIONARY OF THE ENGLISH LANGUAGE (1828; reprinted 1967), defines the word “immediate” to mean “Proximate; acting without a medium or without the intervention of another cause or means; producing its effect by its own direct agency,” or “[i]nstant; present; without the intervention of time.” Because the 1876 legislature simultaneously conferred the University’s ultimate governing authority on the Board of Regents (authority described in terms essentially identical to the Board’s current statutory authority), it seems unlikely that the legislature intended “immediate” to mean “proximate” or “without intervention.”

By law, government by the faculty would be tempered by the authority of the Board of Regents, which had explicit authority to set rules governing the faculty and students. OCLA § 111-3801(6) (1940) (originally adopted as section 9 of the same Act of 1876 that created *current* ORS 352.010). Consequently, we conclude that the legislative intent in 1876 was to provide for the “instant” or “present” government and discipline of the University, capable of exercise “without the intervention of time.” No legislative action subsequent to 1876 suggests an intent to change the nature of the authority originally conferred upon the faculty. Again, the explicit purpose of providing for “immediate” governance and discipline could be frustrated by imposing the voting requirements of ORS 174.130 on a body composed of an unstated number of individuals. We think it unlikely that the 1951 legislature intended that result.

In sum, for the reasons described above, we believe that the text and context of ORS 352.010 indicate that it does not confer authority “on three or more persons” as that phrase is used in ORS 174.130, and, therefore, ORS 174.130 does not apply to the faculty as defined and empowered by ORS 352.010.⁶⁷ However, we acknowledge that a contrary interpretation also is plausible. As the next step of our interpretive methodology, *PGE* directs us to consult the legislative history concerning the 1951 enactment of *current* ORS 174.130.

(2) The legislative history of HB 549 (1951).

We found very little legislative history pertaining to HB 549 (1951). The 1951 Senate and House Journals indicate at page 756 that the bill was considered “by request of Statute Revision Council” and was not amended. This Council was tasked with the full-scale revision of Oregon’s codified statutes, and its work ultimately culminated in the first incarnation of the Oregon Revised Statutes. The Council’s primary aim was to rearrange preexisting law so as to give it an orderly organization facilitating easier use and comprehension of the statutes. REPORT OF THE STATUTE REVISION COUNCIL TO THE FORTY-SIXTH REGULAR SESSION OF THE LEGISLATIVE ASSEMBLY OF OREGON (1951) (“COUNCIL REPORT”) at 4 (“The major function of the Statute Revision Council is that of Code revision”) and 6 (“Revision results in the statutes being clarified, simplified, coordinated, and generally made more accessible, understandable, and usable”). In pursuit of that goal, the Council also understood the need to propose corrective or clarifying amendments to statutes. In fact, the Council was clear that the changes it sought from the 1951 legislature served either to establish standards for interpretation of statutes, or else to address “ambiguities that cannot be resolved, conflicts that cannot be reconciled, and defects that cannot be cured, except through separate and specific legislation.” COUNCIL REPORT at 73. Thus, the fact that HB 549 originated with the Council and was not amended in the legislature is, in itself, a fair indication that HB 549 was not envisioned by the legislature as a significant substantive change.

The COUNCIL REPORT expressly discusses the need to amend OCLA § 5-609. The comments appear to confirm our sense that the legislature would not have intended to change the substantive law applicable to the faculty:

Section 5-609, O.C.L.A., provides that when there is more than one referee all must meet, but a majority may act. It then continues with a very general phrase relating to a majority acting when authority is conferred on any group of three or more persons. In Deady’s Code, and in all compilations up to O.C.L.A., this section was compiled in a chapter of the Code of Civil Procedure entitled “Appeals, Costs, and Miscellaneous Matters in Actions and Suits.” This section is most ambiguous as to the kinds of persons to whom it applies, and thus is almost impossible to clarify. It may be that it is intended to apply only to persons appointed by a court to perform a function in connection with an action or suit. There seems to be no reason for singling out referees, and then continuing on in very general language. Perhaps this section should be repealed, as being out of line with the modern theory that a majoriey [*sic*] may act even though all are not present. In any event, some legislative action should be taken here to clarify or to repeal this section.

COUNCIL REPORT at 77. This brief discussion contains a number of significant revelations.

First, it appears that the Council supported HB 549 as “legislative action * * * to clarify or to repeal” the existing law. This is consistent with the overall purpose of the Council. It seems very likely that the Council’s stated purpose with respect to OCLA § 5-609, combined with the related overall purpose of the Council, framed the legislature’s consideration of the Council’s proposal.

Second, the Council was uncertain of the import of OCLA § 5-609. We have previously observed that the statute was in fact adopted in 1862 as part of the Code of Civil Procedure, applicable to “proceedings in both actions and suits.” However, the Council perceived ambiguity as to whether the section applied in contexts other than court proceedings. Thus, although the Council’s suggestion was likely intended to “clarify or to repeal” existing law, it appears that the suggestion was based on an imperfect grasp of existing law.⁷¹

Third, to the extent that the Council envisioned changes to the existing law, the Council stated an apparent preference for “the modern theory” regarding the prerequisites for collective action. The word “modern” is somewhat curious, as it does not appear that the consensus approach to either of the two quorum and voting rules we have described changed or came under question between 1862 and 1951. In 1860, the tenth edition of KENT’S COMMENTARIES ON AMERICAN LAW discussed the rules applicable to bodies of definite and indefinite size: “In the latter case, a majority of those who appear may act, but in the former, a majority of the definite body must be present, and then a majority of the quorum may act.” Precisely the same rule was articulated by the United States Court of Appeals for the Fourth Circuit in 1945: “The distinction as to the requirement of participation by a majority is ‘between a corporate act to be done by a select body, of a definite number, as, for example, a board of directors or trustees, and one to be performed by the constituent members of the corporation. In the latter case a majority of those who appear may act.’” *NLRB v. Standard Lime & Stone Co.*, 149 F.2d 435, 438 n.3 (4th Circuit 1945), *cert. denied*, 326 US 723 (1945) (citing 13 AmJurCorp 480 and quoting *Morrill v. Little Falls Mfg. Co.*, 55 NW 547 (Minn 1893)).

The term “modern” therefore seems unsuitable, as there was no “modern” rule as distinguished from the common law rules described above. The likely explanation is that the Council was not tasked with tracing the evolution of the common law with respect to these questions. The Council probably perceived “modern” to be an expedient and accurate characterization of the rules we have described, and a characterization that would not require the Council to undertake the collateral task of ascertaining how OCLA § 5-609 related to the general consensus on quorum and voting issues when originally enacted in 1862. To put it perhaps more simply, it appears that the “modern” rule roughly sketched in the COUNCIL REPORT *is* the common law rule, with respect to both definite and indefinite governing bodies.

Taking these conclusions together, it appears that the legislature would have understood HB 549 as an amendment designed to clarify existing law, as the bill clearly did not repeal OCLA § 5-609. To the extent the legislature understood HB 549 as clarifying, curing, or harmonizing existing law, there is no indication other than the changes were intended to align Oregon law with the common law rules. We have uncovered no reason to think that the

legislature viewed HB 549 as working significant changes in the law or as leading Oregon away from those generally accepted quorum and voting requirements.

These perceptions are magnified by the fact that HB 549 passed the House and Senate by a combined vote of 83-1. 1951 Senate and House Journal at 175, 390. In light of the legislative history already discussed, the overwhelming margin of passage and the lack of recorded discussion make it difficult to believe that the legislature understood or intended HB 549 to work significant changes in the law, particularly if those changes would lead Oregon law to diverge from the widely accepted rules on the subject of exercising collective power.^{8/} That in turn suggests that the legislature did not intend HB 549 to apply to the faculty, as applying the statute in that context would work a significant change to Oregon law and would be inconsistent with the generally accepted quorum and voting requirements of bodies of indefinite size.

In short, the available legislative history appears to confirm our textual and contextual understanding of the relationship between ORS 174.130 and ORS 352.010. We nevertheless proceed to the third and final step of the analysis prescribed by *PGE*, primarily because we are hesitant to lean too heavily on the decidedly thin legislative record.

(3) An appellate court applying general maxims of statutory interpretation would likely conclude that ORS 174.130 does not apply to the faculty.

At the third stage of *PGE* analysis, we apply judicially created, content-based maxims of statutory construction. To resolve the present issue, we believe that a court likely would employ the rule favoring interpretations that lead to reasonable, rather than unreasonable, results, *see State v. Vasquez-Rubio*, 323 Or 275, 282-283, 917 P2d 494 (1996), or alternatively attempt to determine what the 1951 legislature would have done had it considered the present question, *see Carlson v. Myers*, 327 Or 213, 225, 959 P2d 31 (1998); *State v. Gulley*, 324 Or 57, 66, 921 P2d 396 (1996). Under either of these related approaches, we believe that a court likely would conclude that ORS 174.130 does not apply to the faculty.

First, we believe it would be unreasonable to require the faculty to exercise its collective power with respect to the “immediate government and discipline” of the University and its students only if a majority of the faculty were able to assemble and a majority could agree on a course of action. The large size of the faculty, in 1951 as now, makes convening such a group difficult, and the fact that the size of the faculty changes as professors arrive and depart would make it necessary – and complicated – to regularly recalculate the necessary number. How governance or discipline realistically could be “immediate” under such circumstances eludes us. Other bodies of indefinite size may not be assigned such immediate responsibilities, but that only makes their pragmatic difficulties less pressing – not less debilitating. In short, we think it would be unreasonable to establish a statutory default rule requiring a majority of the total membership of an indefinite group to agree on any collective action, however trivial or urgent.

A court likely would reach the same conclusion under the principle that, in cases of doubt, a court should determine what the legislature would have done if they had thought about the problem. As we have already seen, the available legislative history raises considerable doubt that the legislature intended to enact any significant change when it passed HB 549 (1951). To

the extent that change was intended, the available evidence suggests that the intended change was in the direction of generally accepted quorum and voting rules. The natural conclusion is that, if the legislature had considered the case of bodies with indefinite compositions, it would likely have adopted the generally accepted rule. We have already explained why we believe the common law rule provides the reasonable default rule for bodies of indefinite sizes. That explanation provides other reasons to think that the legislature would have settled on the common law rule had it considered the issue.

(4) The faculty is subject to common law quorum and voting requirements and is not governed by ORS 174.130.

For the reasons discussed above, we conclude that ORS 174.130 likely does not apply to the faculty's exercise of its collective authority, although our conclusion is not free from doubt. This determination compels the further conclusion that the common law rules apply, as "[t]he substantive law contained in the common law of England remains the law of this state until changed by legislative action." *State v. Blacker*, 234 Or 131, 136, 380 P2d 789 (1963). As we have already discussed, the common law allows a body of indefinite size to act through the vote of a majority of the members present at a proper meeting. Consequently, we conclude that the faculty can exercise its authority under ORS 352.010 by the vote of a majority present at a proper meeting.

4. Current Assembly and the Statutory Faculty.

Our understanding of the Assembly is drawn from the archival materials maintained at the current Assembly's website, *see* <http://www.uoregon.edu/~assembly/assembly.html> (last visited May 28, 2008), and from the Enabling Legislation, which the prior Assembly adopted on May 17, 1995. As noted above, the Assembly consists of "all University of Oregon officers of instruction, librarians, officers of administration" and a fixed number of students. By contrast, the ORS 352.010 faculty is a less inclusive group, *i.e.*, the "president and the professors constitute the faculty of each of the state institutions of higher education."

With respect to the Assembly's ability to exercise the power of the statutory faculty, the principal problem we perceive is that the statutory faculty has effectively ceased to exist as a body, having been replaced over the years by the Assembly. According to the Assembly's archival materials, the last meeting described in the minutes as a "Meeting of the Faculty" occurred on March 5, 1980. Thereafter, it appears that every meeting has been described as a meeting of the Assembly. More importantly, it appears that individuals other than the statutory faculty have been allowed full voting privileges at meetings since at least November 6, 1974, when select students were given full voting privileges.⁹¹ In short, absent a proper delegation of their authority, it appears that, as a body able to exercise powers under ORS 352.010, the faculty has not met for more than thirty years.

Of course, we recognize that the members of the statutory faculty ("the president and the professors") are a part of the Assembly ("officers of instruction"). Indeed, as of 2007, a group known as the "Voting Faculty" constituted a sizable majority of the Assembly, 1600 out of a total membership of 1888 (including students). But we have not located any information by which we could confirm that "Voting Faculty" are the faculty contemplated by ORS 352.010.

But even assuming these individuals are faculty members for purposes of ORS 352.010, the votes of non-faculty members on the Assembly potentially could be decisive on any given question. For example, in a “course of study” matter, the statutory faculty may favor a proposed course of action by a bare majority. If all of the student members of the Assembly are opposed, the majority of the faculty will not prevail. In such a case, the Assembly, and not the statutory faculty, would purport to exercise the authority that ORS 352.010 grants to the faculty. There currently is no established procedure for the statutory faculty to override the Assembly’s decision.

Indeed, there is no apparent mechanism under the Enabling Legislation for the statutory faculty to reconstitute or disband the Assembly without according potentially determinative votes to the Assembly’s non-faculty members. The statutory faculty would need to ignore the current Assembly structure to accomplish such an end, a course of action for which we see no precedent or procedure within the historical records archived at the Assembly’s website. Nevertheless, in the absence of a separate faculty body and a proper delegation from that body, the Assembly may not exercise the authority conveyed only on the faculty by ORS 352.010. Below, we discuss the faculty’s ability to delegate its authority to the Assembly and the faculty’s power to prescribe quorum and voting requirements that apply to the Assembly’s exercise of the faculty’s powers.

5. Delegation of Statutory Faculty Powers to Assembly.

The conclusion that the current Assembly is not the statutory faculty of the University still leaves two questions as to the Assembly’s current authority under ORS 352.010:

- (1) May the statutory faculty delegate their statutory powers to the Assembly; and
- (2) Have they done so?

a. Implied power to delegate faculty’s authority.

As to the first question, “there is no legal general prescription against the retransmission of authority by government agencies.” *Warren v. Marion County et al.*, 222 Or 307, 320, 353 P2d 257 (1960). Moreover, “[t]he authority to subdelegate need not be expressed in the statute and may be implied if there is a reasonable basis for such implication.” *Id.*, 222 Or at 320. We conclude that there is a reasonable basis for implying authority for the faculty to delegate all or part of their ORS 352.010 authority.

The faculty’s “immediate government and discipline” of the institution suggests a power to act generally and specifically as to issues that fall within that power. The idea that the entire faculty would be required in order to act on individual matters of discipline, for example, seems absurd. And where the faculty’s ORS 352.010 authority is not “immediate,” that is, with respect to the “course of study” matters, we observe that decisions as to the diverse fields of study offered by the University seem reasonably suited in many instances to specialized departmental work rather than actions by the entire faculty.

It is true that there were few faculty members at the time ORS 352.010 originally was enacted in 1876. But it is also clear that the envisioned scale of the University has been ambitious since it was conceived in 1859, "having for its design to provide instruction and complete education in all the departments of science, literature, professional pursuits, and general education." Preamble to an Act of October 21, 1876. This context persuades us that the power of the faculty to subdelegate their authority is reasonably implied from *current* ORS 352.010. In reaching this conclusion, we draw support from the Oregon Supreme Court's decision in *Matthews v. Oregon State Board of Higher Education*, 332 Or 31, 22 P3d 754 (2001). There, the court approved the University President's subdelegation of ORS 352.004 authority regarding tenure denials. *Id.* at 38.

b. Existence of delegation.

The issue remains, however, whether the decades-old decision to include non-faculty members in the faculty's governance of the University properly may be characterized as a delegation by the statutory faculty to the Assembly. A complicating factor is that the statutorily recognized faculty has ceased to exist as an independent body. We have identified no historic action by the faculty members that formally delegated all or part of their ORS 352.010 authority as a body to the Assembly as a separate body. The apparent intent behind the decision to include non-faculty members in the Assembly was not to delegate authority to the Assembly but rather to treat the Assembly as the statutory faculty. Indeed, the fact that the statutory faculty did not reserve to themselves any authority to withdraw a delegation of their ORS 352.010 powers to the Assembly further supports this assessment of the faculty's intent. Because ORS 352.010 prescribes the membership of the body that exercises power under that statute, the faculty cannot establish a different membership for that group.

In sum, the statutory faculty probably may delegate all or part of its ORS 352.010 powers to a separate body such as the Assembly that consists of persons who act on behalf of the University. But the statutory faculty members must reserve to themselves the ability to withdraw or modify that delegation.

c. Faculty-imposed quorum or voting requirements.

To the extent that the Assembly exercises the faculty's ORS 352.010 authority, the Assembly is properly governed by such quorum and voting requirements as the faculty may choose to impose upon it. This conclusion stems largely from principles articulated in our Letter of Advice dated January 16, 1985, to Jeffrey Milligan, Executive Director, Juvenile Services Commission (OP-5763). We concluded there that the Juvenile Services Commission ("Commission") could determine quorum and voting requirements on the advisory committees the creation of which was not required by law but committed to the Commission's discretion. With respect to those committees we said, "since their existence, duties, and characteristics are totally dependent upon exercise of discretion by the [Commission], that body can 'otherwise provide by law' (administrative rule) what can constitute a quorum." *Id.* at 4-5.

We acknowledge that the Assembly differs from those committees in that the Assembly potentially exercises substantive, rather than advisory, authority. But the Assembly also is different in that at least some of its authority is statutorily conferred on a group that is not subject

to ORS 174.130, *i.e.*, the faculty. It would be illogical to conclude that ORS 174.130 must govern the Assembly when the Assembly is the discretionary creation of a body that is not itself subject to the requirements of the statute.

6. IMD 1.123, the Assembly, and the Faculty.

As noted above, ORS 351.070(4)(b) gives the Board authority to set rules for the government of the institutions under its jurisdiction, including the University. The Board's authority may be delegated "to the institutions, divisions and departments under its control." ORS 351.070(4)(b). Presumably pursuant to this statutory authority, the Board has adopted IMD 1.123(2):

Each institution shall have the right to formulate a statement of internal governance expressed as a constitution or in other appropriate format, which shall be ratified as the official statement of internal governance by those included in the internal governance structure of the institution and by the President.

The internal governance statement is subject to review and modification when a new President assumes office and at such other times as shall be provided for in the internal governance statement; any amendatory action shall also be subject to ratification by those included in the internal governance structure and by the President.

Previous advice from our office has indicated in part that the Enabling Legislation should be treated as a governance statement of the type contemplated by the IMD. Letter from Assistant Attorney General Joe McKeever to Suzanne Clark, March 8, 2007 (available at www.uoregon.edu/~uosenate/dirsen067/DOJ-8Mar07.pdf, last visited May 20, 2008). While we agree with that assessment,^{10/} we disagree with and overrule another aspect of the letter. Specifically, contrary to that letter, we conclude that the Assembly is "included in" the governance structure described by the Enabling Legislation. We have noted that the Enabling Legislation contemplates that under specified conditions, the Assembly could be convened with "full legislative power." As enacted by the Assembly in 1995, the Enabling Legislation also permitted the Assembly to return for reconsideration measures adopted by the University Senate.^{11/} These factors clearly indicate that the Assembly is an integral part of the governance structure.

As also noted above, IMD 1.123 is less than definitive in identifying the "institution" and its "internal governance structure." For example, while authority is delegated to an "institution" to establish the "internal governance structure" of the institution, it is not entirely clear what or who is the "institution" that receives this delegation. Presumably, authority to accept that delegation on behalf of the institution would depend on having authority to *be* the internal governance structure of the institution, and yet that authority is the very thing that the IMD purports to authorize. The delegation of authority by the IMD therefore appears to be circular: "We, the Board, delegate to you, the internal governing structure of the institution, however you may constitute yourself, authority to constitute yourself as the internal governing structure of the institution."

As a practical matter, because the University's faculty has not met apart from the Assembly since 1974, we suspect that, with respect to the University, the pertinent "institution" and its "internal governance structure" that the Board perceived to exist was a group like the Assembly (including but not limited to professors) and the President or the President's designees, in such form as those persons would agree to organize amongst themselves. While it is possible that there is a difference between "internal governance" under the IMD and "immediate government" under ORS 352.010, we think it highly unlikely that the Board intended to draw such a distinction in promulgating IMD 1.123. The problem with an "internal governance structure" that differs from or does not recognize the statutory faculty is that, absent a proper delegation from the faculty, the "internal governance structure" lacks authority to exercise ORS 352.010 powers. Put another way, while the IMD in part purports to authorize the creation of an internal governance body, the legislature already has conferred "immediate government" powers on the faculty. To the extent that the composition of these governance bodies differs, their powers may conflict in some areas or reside only in one of the bodies as to other matters.

We believe that any tension between the governance bodies created under IMD 1.123 and ORS 352.010 can be reconciled through a few actions. First, the faculty can simply recommence meeting as a body distinct from the Assembly.^{12/} The faculty could delegate the exercise of their statutory powers to the Assembly. The faculty also could set the quorum and voting requirements for the Assembly's exercise of the faculty's powers. Other than these initial acts, the only necessary business for the statutory faculty is to retain a separate existence that would facilitate a reclamation of authority delegated to the Assembly should the faculty determine in its discretion that part or all of the delegation is no longer desirable. As means to this end, the faculty should establish some schedule of faculty meetings, along with a procedure for calling such meetings should some portion of the membership so desire. Because it has been decades since such a separate meeting last occurred, it may also be desirable at the first such meeting to ratify the acts of the Assembly during the interim that pertain to curricular matters and to the immediate government and discipline of the University and its students, and affirm that the faculty is satisfied by the way in which the Assembly has exercised authority. The University's statement of internal governance also should be amended to recognize this role of the statutory faculty. Finally, since the statutory faculty would reassume its role as part of the "internal governance structure" of the University, and to be consistent with IMD 1.123, any amendments to the internal governance statement should also be ratified by the statutory faculty.

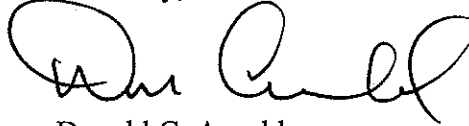
CONCLUSION

Meetings of the University's statutory faculty likely are governed by the common law's quorum and voting requirements that apply to bodies of indefinite size. In other words, as to matters over which they are competent to exercise authority, the statutory faculty may pass a motion by affirmative vote of a majority of their members present at a proper meeting. And to the extent the Assembly exercises the faculty's governance powers, the Assembly will be governed by whatever quorum and voting requirements the faculty decides to impose upon it.

We emphasize that our discussion is narrowly addressed to the proper quorum for the faculty and the Assembly. Again, we do not purport to address the scope of the faculty's power

or the relationship of that power to the authority of the Board or the President, except as it directly pertains to the faculty proper exercise of whatever power they may possess.

Sincerely,



Donald C. Arnold
 Chief Counsel
 General Counsel Division

DCA:JTM:MCK:CAC:mcg:naw/627344-v4
 c: Dave Frohnmayer, President, University of Oregon
 George Pernsteiner, Chancellor, OUS

¹⁷ In the course of discussions about the analysis underlying this letter, questions have been raised about the evolution (or non-evolution) since 1876 of the statutory authorities of the Board, the President, and the faculty of the University of Oregon. In fact, these statutory authorities have changed very little over the ensuing 132 years and have not changed at all in ways that are relevant to the requirements for a faculty quorum, as the following chart demonstrates.

Entity	Act of October 21, 1876	Current Law
Board	The general powers and duties of the board of regents shall be as follows: * * * (6) <i>To supervise the general course of instruction in the University, and to enact rules and by-laws for the government thereof, including the faculty, teachers, students and employees therein</i> * * *. Section 9	Subject to such delegation as the board may decide to make to the institutions, divisions and departments under its control, the board, for each institution, division and department under its control: (a) Shall <i>supervise the general course of instruction therein</i> , and the research, extension, educational and other activities thereof. (b) <i>Shall adopt rules and bylaws for the government thereof, including the faculty, teachers, students and employees therein.</i> ORS 351.070(4)
President	The president of the university <i>is also president of the faculty</i> , but whenever required by the board of regents, he shall perform the duties of a professorship; he is also the <i>executive and governing officer of the school, except as herein otherwise provided</i> ; and subject to the supervision of said board, he <i>has authority to control and give general directions to the practical affairs of the school.</i> Section 15	The president of each state institution of higher education within the Oregon University System <i>is also president of the faculty</i> . The president is also the <i>executive and governing officer of the institution, except as otherwise provided by statute.</i> Subject to the supervision of the State Board of Higher Education, the president of the institution <i>has authority to control and give general directions to the practical affairs of the institution.</i> ORS 352.004 (renumbered from ORS 351.020 in 1987)

Faculty	The <i>president and the professors constitute the faculty</i> of the university, and, <i>as such, shall have the immediate government and discipline of it and the students therein</i> ; but in all matters connected with the government and discipline of the preparatory department, the teachers therein shall be heard and consulted. The faculty shall also have power, subject to the supervision of the board of regents, to prescribe the course of study to be pursued in the university, and the text-books to be used. Section 14	The <i>president and professors constitute the faculty</i> of each of the state institutions of higher education and <i>as such have the immediate government and discipline of it and the students therein</i> . The faculty may, subject to the supervision of the State Board of Higher Education under ORS 351.070, prescribe the course of study to be pursued in the institution and the textbooks to be used. ORS 352.010
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What few changes have been made to these statutes appear on their face to be non-substantive, and a closer look at the laws that account for the changes confirms the correctness of that appearance. For example, the Board's authority, originally vested in a board of regents, was transferred to the new state board by legislation providing simply that "the department of higher education shall succeed to and hereby is invested with all the powers and duties of the board of regents of the University of Oregon." Or Laws 1929, ch 251, § 6. In 1945, the legislature repealed the statutory references to the board of regents and directly conferred the same powers in the name of the Board. Or Laws 1945, ch 449, § 1. The 1945 law is the source of current ORS 351.070. See Oregon Revised Statutes 1953, Reviser's Notes, v 2 at 577. The lineage from the 1876 provisions pertaining to the President and the faculty to the current provisions is even more direct. See Oregon Revised Statutes 1953, Reviser's Notes, v 2 at 582.

^{2/} Currently, the students included are "the twenty members of the Student Senate; twenty-five members of the ASUO Executive; and five members of the ASUO Constitution Court." The composition on January 1, 1996 included two fewer Student Senators. Enabling Legislation, Section 6.1 (amended by US07/08-22 at the 14 May 2008 UO Senate meeting; this amendment has not been ratified by President Frohnmayer, see note 10, below, or the Assembly, see note 11, below).

^{3/} We refer to the 1995 version of the Enabling Legislation rather than the more recent amended version because we conclude that amendments to the Enabling Legislation must be ratified by the Assembly. See note 11, below.

^{4/} The University Senate also includes members who are not faculty members:

[Forty-eight senate seats distributed * * * as follows: 37 Officers of Instruction[,] 2 Librarians[,] 3 Officers of Administration[,] 5 Students [,] 3 Classified Staff[,] 1 President of the Senate[.]

Section 2.1, Enabling Legislation.

^{5/} In a speech delivered to the October 1, 1969 meeting of the faculty, University President Robert D. Clark referred to a time when "President John Wesley Johnson and the two professors who with him constituted the faculty could conduct the University business in a committee of the whole." Minutes of the October 1, 1969, Meeting of the Faculty (available at <http://www.uoregon.edu/~assembly/AssemblyRecordsVol5/Vol5-266.pdf>, last visited May 21, 2008). John Wesley Johnson was named the first President of the University in 1876. See <http://president.uoregon.edu/history/history.shtml>, last visited April 28, 2008.

^{6/} Although we have implicitly recognized that the law confers authority on the faculty, we have not discussed whether the law expressly provides for another rule. We note that ORS 352.010 expressly provides that one or two faculty could exercise statutory authority, at least where there are no other faculty members. And the common law would apply a different rule to the collective gathering of the faculty. However, there is no “express” statutory provision stating that ORS 174.130 is inapplicable when three or more faculty members act collectively or establishing a specific quorum requirement. We have previously indicated that a statute specifying a particular quorum is an express provision that renders ORS 174.130 inapplicable. *See* Letter of Advice dated January 16, 1985 to Jeffrey Milligan, Executive Director, Juvenile Services Commission (OP-5763) at 2 (“Many boards and commissions have statutes designating the number of members which form a quorum. Such statutes are the ‘otherwise provided by law’ recognized by ORS 174.130”).

^{7/} This is not intended, and should not be interpreted, as criticism of the Council. Given the immense scope of the Council’s task, there is simply no way the Council could have developed a fully nuanced understanding of each statutory provision affected by its work.

^{8/} We note that, with respect to bodies of a definite size, HB 549 (1951) has precisely the effect we suggest the legislature is unlikely to have intended, at least under our decades-old interpretation of the statute. However, that longstanding interpretation is arguably compelled by the text of ORS 174.130 taken in its proper context. That is, the split effected by HB 549 (1951) does establish new law. Moreover, the two sections of the bill used the same phrase, “a majority of them,” to describe the number required for action. Because the second section used that phrase in conjunction with the requirement that “all must meet,” it appears that the majority required for action under that common phrase is a majority of the whole. As the applicability of ORS 174.130 to boards of definite size is arguably clear from the text and context of the statute, this legislative history may be irrelevant to analyzing the meaning of ORS 174.130 as applied to bodies of a fixed size. “If the legislature’s intent is clear from the text and context of the statute, then further analysis is unnecessary.” *State ex rel Dep’t of Human Services v. Rardin*, 338 Or 399, 407, 110 P3d 580 (2005).

^{9/} Minutes of November 6, 1974 Meeting of the Faculty (available at <http://www.uoregon.edu/~assembly/AssemblyRecordsVol6/Vol6-151.pdf>, last visited May 21, 2008). In 1941, voting privileges were extended to full-time instructors. By motion, the faculty determined that those instructors should be considered “professors” for purposes of then OCLA § 111-3804. Minutes of May 7, 1941 Meeting of the Faculty (available at <http://www.uoregon.edu/~assembly/AssemblyRecordsVol4/Vol4-755.pdf>, last visited May 21, 2008). Prior to that time, it appears that the president, professors, associate professors, and assistant professors were considered to be the voting faculty. Minutes of April 2, 1941 Meeting of the Faculty (available at <http://www.uoregon.edu/~assembly/AssemblyRecordsVol4/Vol4-755.pdf>, last visited May 21, 2008).

^{10/} The IMD requires ratification of the governance document by those included in the governance structure. The minutes of the first meeting of the newly constituted Senate on January 17, 1996 do not indicate that the Senate formally ratified the Enabling Legislation. Nor have we found any indication that the President of the University did so. However, we believe that ratification can be implied by the fact that both the Senate and the President have acted as though the Enabling Legislation is operative. Also, the Senate has since purported to amend various aspects of the Enabling Legislation. Although we conclude in note 11, below, that those amendments require the approval of the Assembly to take effect, we also believe that the attempt to amend the Enabling Legislation indicates the Senate’s ratification. The same is true for President Frohnmayer’s ratification of some of the amendments by letter dated May 5, 2008. (It appears that US07/08-5 was overlooked in Senate President Sayre’s May 2, 2008 letter to President Frohnmayer seeking ratification, and US07/08-22 was not passed until May 14, 2008.)

^{11/} The Senate has since purported to amend this provision. In conformity with the March 8, 2007 advice, it does not appear that the Assembly has ratified those changes. Because the IMD provides that “amendatory action shall * * * be subject to ratification by those included in the internal governance structure,” and because we conclude that the Assembly is so included, it follows that the Assembly must ratify amendments to the Enabling Legislation in order to conform with the terms by which the Board delegated its authority. Because it does not appear that the matter has been presented to the Assembly for ratification, and because Assembly members may have relied on our previous advice to conclude that they were not empowered to do so, we do not find that the Assembly has effectively ratified these attempted amendments. Thus they are inoperative unless and until they are so ratified.

^{12/} Again, the statute defines the faculty as the professors and the President of the University. The identity of the President is obvious. Without definitively determining the meaning of “professors,” we note that WEBSTER’S (1828) defines “professor” to mean, pertinently: “One that publicly teaches any science or branch of learning; particularly, an officer in a university, college, or other seminary, whose business is to read lectures or instruct students in a particular branch of learning.” Regardless of whether that definition is precisely applicable to ORS 352.010, we think it is clear that the legislature in 1876 would not have intended to include students, for example, among the faculty. Nor do we see any indication that the enacting legislature would have intended the term “faculty” to reach officers of administration.