



UNIVERSITY OF OREGON

November 10, 2009

Peter Gilkey
President, University Senate
University of Oregon
Eugene, OR 97403

Dear Professor Gilkey:

The Charter for the University Senate contains the following provision:

“Because the University Senate is a public body, it is subject to the provisions of the Oregon Public Meetings Law. Specifically, if two or more members of any public body have the authority to make decisions for or recommendations to a public body on policy or administration, they are a governing body for purposes of the meetings law. [See ORS 192.610(3)]

The Oregon Public Meetings Law authorizes governing bodies to meet in executive session in certain limited situations. (See "Executive Session" for details.)”

You indicated that you had received questions from individuals who inquired if the Oregon Public Meetings Law did, indeed, apply to the University Senate as is stated in the Charter and asked for my opinion. My research and analysis lead me to a different conclusion about the applicability of the Oregon Public Meetings Law than that contained in the Charter.

My short answer to your question is that in certain circumstances the Oregon Public Meetings Law may by operation of law apply to the University Senate, but in all others, it applies only to the extent the University Senate Charter self-imposes those requirements. Let me also be clear that the answer to this question is not intended to imply or suggest an answer to the fundamental underlying question of whether the University Senate *should* hold its meetings in public after providing notice to the community or establish and follow other procedures required by the Oregon Public Meetings Law, which is designed to create an informed public aware of the deliberations and decisions and the information upon which the decisions were made. ORS192.620. My conclusions in this document are meant merely to answer the question of whether the University Senate or other similar body *must* follow the express requirements of the statute.

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Analysis

My conclusion regarding the application of the Oregon Public Meetings Law to the University Senate is based on the direct language of the Oregon Public Meetings Law (ORS 192 .610-.710), the interpretations and illumination of it contained in the Attorney General's Public Records and Public Meetings Manual (January 2008) and various documents that define the role of the University Senate such as statutes, State Board of Higher Education (SBHE) Internal Management Directives (IMDs) and University Senate Motion SF08/09-1, delegating the authority of the statutory faculty to the University Senate. I have set out the analytical steps I followed below.

The first part of the question requires assessing if, or to what extent, the University Senate is a governing body. "The Public Meetings Law applies to all meetings of a *governing body* of a public body for which a quorum is required in order to make a decision or deliberate toward a decision on any matter." [*Emphasis added.*] AG's Public Meetings Manual p. 109, *citing* ORS 192.610(5). ORS 192.610(3) defines a "governing body" as a body "with the authority to make decision for or recommendations to a public body on policy or administration."

A single individual is not a "public body" for purposes of the public meetings law. Therefore, a body that makes recommendations to a university president is not making recommendations to a public body. In contrast, a body that makes decisions for, or recommendations to, the SBHE is making recommendations to a public body. Because of the authority granted by statute and SBHE to the president, most decisions regarding the operations of the university are recommendations to the president. See, e.g., ORS 352.004, designating the university president the executive and governing officer of the university and giving the president authority to control the "practical affairs" of the university and SBHE IMD 1.120 delegating to the university president full authority and responsibility to administer the affairs of the university consistent with SBHE policies, etc and SBHE IMD 1.130, assigning the President responsibility "for development and administration of institutional policies and rules governing the role of students and their conduct."

The faculty, by statute, also has authority. While that grant is not stated in detail and its relationship with the president's authority is not well-defined, historically the faculty's authority has been over the curriculum and the discipline of the students, subject to limitations contained in ORS 351.070 and SBHE IMD 1.130 and IMD 2.001, as well as to a more limited degree, ORS 351.200. As a result, it appears that the University Senate when it is making decisions regarding curriculum and, to the

extent permitted by SBHE IMD 1.130, student discipline might be considered a governing body. Beyond that, considered in light of other statutes and OSBHE IMD's, it appears the University Senate's authority is not express and is that authorized by the president subject to veto by the president. SBHE IMD 1.123. In other words, it is a recommendation to the president.

The second part of the analysis is whether the Oregon Public Meetings Law applies to the meetings of the University Senate. "Meeting" means the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter. ORS 192.610(5). When the University Senate meets, Article IV of the University Senate By-laws requires a quorum to make a decision or to deliberate toward a decision. A cautious reading of the Oregon Public Meetings law suggests that, whenever the University Senate is considering matters related to curriculum and student discipline, it could be considered a governing body and would then be required to comply with the requirements of the Oregon Public Meetings law.

The final part of my analysis focuses on whether the Oregon Public Meetings Law applies to meetings of the University Senate where there the University Senate is making decisions or deliberating on matters other than curriculum and student discipline. When a quorum of a governing body gathers to discuss matters outside the governing body's jurisdiction, the Oregon Public Meetings Law does not apply. AG's Public Meetings Manual p. 11g, *citing* 38 Op Atty Gen at 1474. This means when the University Senate is discussing matters other than curriculum and student discipline, because the University Senate is advisory to the president and its actions are subject to the President's veto, the Oregon Public Meetings Law does not apply by operation of law. However, the University Senate currently must comply with Oregon Public Meetings Law currently depending on to what extent its Charter requires it to do so.

Sincerely,



Melinda W. Grier
General Counsel