

PUBLIC MEETINGS LAW APPENDIX F
Summaries of Oregon Attorney General's
Formal Opinions and Selected Informal Opinions
Concerning Public Meetings Law

37 Op Atty Gen 183, October 11, 1974

The Public Meetings Law prohibits the use of secret ballots by a governing body.

38 Op Atty Gen 50, August 10, 1976

A governing body may not ban the tape recording of its official public proceedings by individual citizens, but it may restrict such taping *only* to the extent necessary to protect the orderly conduct of the proceedings.

38 Op Atty Gen 1471, November 4, 1977

Information-gathering sessions of a public body (except on-site inspections) are "meetings" under the Public Meetings Law.

38 Op Atty Gen 1584, December 2, 1977

The Management Board and the Advisory Committee of the Tri Agency Dog Control Authority (two cities and a county) are both governing bodies subject to the Public Meetings Law.

38 Op Atty Gen 2122, May 31, 1978

It is constitutional for the Public Meetings Law to provide that information obtained by newsmen during an executive session shall not be disclosed. ORS 192.660(4) does not restrict rights of the news media, but instead grants a limited right of access which otherwise would not exist. "[I]n each case where an executive session is authorized by the Public Meetings Law, the operation and interests of an Oregon governing body could be jeopardized if the meeting were made public." No sanction is provided for a reporter's violation of a directive not to disclose specified information. "The legislature apparently chose to rely upon the good faith of reporters in complying with the requirement." (ORS 192.660(4) is now codified as ORS 192.660(3).)

39 Op Atty Gen 480, January 12, 1979

A written personnel evaluation of a community college president is exempt from public inspection under ORS 341.290(19)(b), except with the consent of the college president involved. (ORS 341.290 is listed in ORS 192.500(2)(h).) An executive session of the board may be held under ORS 192.660(2)(b) “to consider records that are exempt by law from public inspection.” (ORS 192.660(2)(b) was recodified as ORS 192.660(1)(f). Or Laws 1979, ch 664. ORS 341.290(19) was recodified as ORS 341.290(17). Or Laws 1983, ch 182.)

39 Op Atty Gen 525, February 20, 1979

The Public Meetings Law requires that all votes of governing bodies and the vote of each member be recorded and made public. Under *La-Grande/Astoria v. PERB*, 281 Or 137, 576 P2d 1204, *adhered to* 284 Or 173, 586 P2d 765 (1978), any charter provision to the contrary is superseded by the state law.

39 Op Atty Gen 600, March 16, 1979

A high school newspaper reporter is a “representative of the news media” and may attend a school board executive session if the newspaper ordinarily covers news germane to the subject of the executive session. The reporter may be excluded if district or school policy bars coverage of matters of the nature discussed. If the reporter is admitted, the “good faith” of the reporter in complying with any nondisclosure requirement may be reinforced by school and district control of the content of the paper.

39 Op Atty Gen 703, May 22, 1979

It is not an unconstitutional violation of equal protection for the Public Meetings Law to allow access by news media representatives to executive sessions, while denying it to the public. (The Oregon news media “Shield Law,” ORS 44.520, does not violate the Equal Protection Clause of the Fourteenth Amendment.)

40 Op Atty Gen 388, April 11, 1980

Deliberations of a county court (board of commissioners) after a public hearing under ORS 215.422, involving an appeal from the granting of a subdivision permit, are subject to the Public Meetings Law and must be held in public. The exemption for equivalent deliberations of a state agency governing body after a contested case hearing (ORS 192.690(1)) does not

apply to local government bodies. The exemption for judicial proceedings does not apply to quasi-judicial proceedings.

40 Op Atty Gen 458, May 12, 1980

A workshop session of the board of a special district is subject to the Public Meetings Law. Notice requirements discussed. Unless the statute authorizes an executive session, any meeting of a quorum of a board to hear arguments of non-board members, in any setting, must be held in public.

41 Op Atty Gen 28, July 14, 1980

Home-rule cities and counties are subject to the Public Meetings and Records Laws. Regular or special meetings between members of administrative staff and a county governing body are “public meetings.” Notation of regular and special meeting dates on a master calendar in the board’s office is *not* sufficient notice of meetings. Notice is not specifically required to contain an agenda but other statutes governing specific subject matter may require an agenda. (NOTE: ORS 192.640(1) has since been amended to require “a list of the principal subjects anticipated to be considered at the meeting”.) *Any* meeting of two or more members of a three-member governing body is a “public meeting” if the purpose is to decide or deliberate toward a decision on matters within the jurisdiction of the board, regardless of who may or may not be present.

41 Op Atty Gen 218, November 5, 1980

Deliberations of LUBA *after* formal hearings are not subject to the Public Meetings Law. Final orders of the board are public records subject to disclosure when issued. Recommendations to LCDC are subject to disclosure when submitted to the commission.

41 Op Atty Gen 262, December 5, 1980

Provision for executive session to “consider the employment of a public officer” pertains only to *hiring* of officer, not the manner of carrying out duties of existing employment. (Remainder of opinion superseded by action of the legislature in authorizing executive sessions “[t]o review and evaluate * * * the employment-related performance of the chief executive officer” or other officers, staff members or employees, unless the person requests a public hearing. Standards, criteria and policy relating to chief executive officers only must be adopted in public with opportunity for public comment. ORS 192.660(1)(i).)

41 Op Atty Gen 437, April 14, 1981

Routine job performance evaluation material concerning a local school district superintendent, not relating to health, family status, personal finances or similar subjects, is *not* exempt from disclosure under the “personal information” exemption under the Public Records Law. *Information relating to manner of performance of public duties is not personal.*

(Answer to the second question, that the file could not be considered in executive session, was superseded by enactment of ORS 192.660(1)(i). *Enactment of that provision did not supersede our answer above to the first question.*)

42 Op Atty Gen 187, December 23, 1981

A three-member body with investigatory and reporting functions, of which one member was appointed by the Governor of Oregon and two by the Governor of Washington, is not subject to the Public Meetings Law (1) because it was not delegated authority to decide policy, to administer or to make recommendations; (2) because the Governor (to whom it reported) as an individual officer is not a “public body,” as the term is defined in ORS 192.610(3); and (3) the body was not an Oregon body.

42 Op Atty Gen 362, May 18, 1982

A public body may not discuss its chief executive officer’s salary in executive session as part of the process of setting it, despite ORS 192.660(1)(a), or the 1981 enactment of ORS 192.660(1)(i). It may not discuss salary negotiations for non-union employees in executive session.

42 Op Atty Gen 392, June 9, 1982

The Oregon Investment Council may employ executive sessions to consider records exempt by law from public inspection, if it knows or has good reason to believe other governmental bodies are in competition for the kind of investment opportunity it is considering; and to deliberate with any person designated by it to negotiate a real property transaction. It has no means of enforcing its confidentiality requirements upon news media attending.

Stock and stock market appraisals submitted in confidence by its money managers, written evaluation of its money managers, and technical reports prepared by consultants and money managers may be kept confidential and discussed in executive session if the requirements of ORS 192.500(2)(c) can

be met. Oral evaluation of a money manager may be discussed in executive session if dismissal of the money manager is being considered.

Letter of Advice (OP-5468), July 13, 1983

Free expression of opinion may not be exercised in an untrammelled fashion wherever and whenever and in whatever manner a person chooses, even on public property. Rules that relate to the order and decorum of public bodies, limitations on time allowed for persons to make presentations, requirements that no one may have the floor without securing permission from a presiding officer, and specific prohibitions against disturbing or disrupting a meeting are not uncommon. Conduct violating such rules provides grounds for ejecting persons from meetings or premises of public bodies.

44 Op Atty Gen 69, June 27, 1984

The power possessed by student governments under ORS 351.070(1)(d) and (e) to recommend incidental fee assessments and allocations to the Board of Higher Education makes the student government committees that prepare and make the recommendations governing bodies subject to the Public Meetings Law.

46 Op Atty Gen 97, July 6, 1988

We believe this opinion may no longer be correct in light of *Marks v. McKenzie High Schl. Fact-Finding Team*, 319 Or 451, 878 P2d 417 (1994). Although *Marks* concerned the Public Records Law, we believe the same factors may apply to determine whether a private body is the “functional equivalent” of a public body for purposes of the Public Meetings Law.

Letter of Advice (OP-6292), September 12, 1988

The Public Utility Commission must comply with the Public Meetings Law when a quorum of the commission meets with staff to receive informational briefings on general topics of public utility regulation and agency administration. Even if information conveyed at a briefing did not relate to a matter requiring immediate action, the information could have some bearing on future decisions, the responsibility for which is placed upon a quorum of the commission.

Letter of Advice (OP-6248), October 13, 1988

Whether the meetings of the presidential search committee are subject to the Public Meetings Law depends upon whether that committee is properly viewed as providing recommendations to the Chancellor or to the Board of

Higher Education. Although the committee gives its recommendations for finalists to the Chancellor, the Chancellor appears to lack authority to screen out any of the finalists, nor may the Chancellor rank his or her recommendations. In light of this limited role of the Chancellor, we conclude that the board is the principal recipient of the search committee's recommendations. Accordingly, the committee is an advisory group to the board, and hence it is a "governing body" subject to the Meetings Law.

46 Op Atty Gen 155, March 17, 1989

The board of directors of the Oregon Medical Insurance Pool is not a governing body of a public body, and therefore is not subject to the Public Meetings Law.

Letter of Advice (OP-6376), May 18, 1990

A governing body may meet in executive session to "conduct deliberations with persons designated by the governing body to negotiate real property transactions." ORS 192.660(1)(e). The apparent policy underlying this provision is to permit public bodies to protect their negotiating position in real property transactions by keeping certain information confidential. This provision does not permit a governing body to discuss long-term space needs or general lease site selection policies in executive session.

Letter of Advice (OP-1997-4), August 13, 1997

The State Professional Responsibility Board (SPRB) is part of the attorney disciplinary process of the Oregon State Bar. The SPRB does not hear formal charges against attorneys, but determines whether particular complaints should be pursued. Because the SPRB is a state board with authority to make decisions on attorney disciplinary complaints, its meetings are subject to the Public Meetings Law unless exempt under ORS 192.690 as a "judicial proceeding." We find that the most persuasive interpretation of "judicial proceedings" encompasses those proceedings initiated within the judicial branch that are adjudicatory in nature and that are part of a process that ultimately may result in a judicial decision. The SPRB meetings meet those criteria and are therefore exempt from the Public Meetings Law.

49 Op Atty Gen 32, April 29, 1998

Information obtained by a health professional regulatory board as part of an investigation of a licensee is confidential and may not be disclosed, except in limited circumstances. ORS 676.175. Therefore, when a health professional regulatory board holds a contested case hearing on a notice of intent to

impose a disciplinary sanction on a licensee, the hearing must be held in executive session. ORS 192.660(1)(k). Representatives of the news media may attend such hearings. ORS 192.660(3). Because a board's deliberations following a contested case hearing are not subject to the Public Meetings Law, the board is not required to provide notice of such meetings, take minutes or permit attendance by representatives of the news media. ORS 192.690. The board may not take a final action or make final decisions on such disciplinary cases in executive session, but should ensure that any discussion in public session does not disclose information that is confidential under ORS 676.175.