

August 13, 1997

L. Patrick Hearn
Executive Director
Oregon Government Standards and Practices Commission
100 High Street SE, Suite 220
Salem, OR 97310

Re: Opinion Request OP-1997-4

Dear Mr. Hearn:

You ask whether meetings of the State Professional Responsibility Board (SPRB) are exempt from the requirements of the Oregon Public Meetings Law, ORS 192.610 to 192.690. We conclude that meetings of the SPRB are exempt from the Public Meetings Law.

Discussion

The Public Meetings Law requires meetings of a "governing body" of a "public body"⁽¹⁾ to be open to the public, unless the subject of the meeting is one for which the law authorizes an executive session. ORS 192.630, 192.660. The law also requires governing bodies to provide public notice and to keep minutes of their meetings, irrespective of whether the meeting is an open meeting or an executive session. ORS 192.640, 192.650. However, certain proceedings are exempt entirely from the Public Meetings Law. ORS 192.690.

1. The State Professional Responsibility Board

The SPRB is part of the attorney disciplinary process of the Oregon State Bar (bar). The bar is "a public corporation and an instrumentality of the Judicial Department of the government of the State of Oregon." ORS 9.010. The Supreme Court has described the bar's status:

Moreover, the Oregon State Bar does not operate as an independent licensing authority, but as an instrumentality of the Judicial Department of the government of the State of Oregon and (sic) its members are not only officers of the courts, but are subject to discipline by the courts for misconduct. (*See* ORS 9.010 and 9.460 to .580, inclusive.)

Oregon State Bar v. Wright, 280 Or 693, 697-698, 573 P2d 283 (1978).

The bar is generally subject to the Oregon Public Meetings Law. ORS 9.010(1). The Board of Governors of the bar is directed to create a state professional responsibility board "to review the conduct of attorneys and to institute disciplinary proceedings against members of the bar. The composition and authority of the state professional responsibility board shall be as provided in the rules of procedure." ORS 9.532(2).

Attorney disciplinary proceedings are neither civil nor criminal proceedings and are within the inherent power of the Supreme Court to control. ORS 9.529. The SPRB does not hear formal charges against attorneys, but determines as a preliminary matter whether particular complaints should be pursued. A disciplinary board or panel hears the formal charges and files its written decisions on disciplinary action with the Supreme Court. ORS 9.534, 9.536.

The SPRB is a governing body of a public body in that the SPRB is a state board with authority to make

decisions on attorney disciplinary complaints. ORS 9.532. Therefore, its meetings are subject to the Public Meetings Law unless exempt under ORS 192.690.

2. Application of the Oregon Public Meetings Law to SPRB

a. Text and Context of ORS 192.690

The state's policy on public meetings is stated in ORS 192.620, as follows:

The Oregon form of government requires an informed public aware of the deliberations and decisions of governing bodies and the information upon which such decisions were made. It is the intent of ORS 192.610 to 192.690 that decisions of governing bodies be arrived at openly.

Consistent with this expressed policy, the Oregon courts interpret coverage of the Public Meetings Law broadly and its exemptions narrowly. *Oregonian Publishing Co. v. Board of Parole*, 95 Or App 501, 769 P2d 795 (1989).

To determine the scope of the exemptions in ORS 192.690, we look first to the terms of the statute and its context. *PGE v. Bureau of Labor and Industries*, 317 Or 606, 859 P2d 1143 (1993). ORS 192.690 provides in relevant part:

(1) ***ORS 192.610 to 192.690 shall not apply to the deliberations of the State Board of Parole and Post-Prison Supervision, the Psychiatric Security Review Board, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550, the review by the Workers' Compensation Board or the Employment Appeals Board of similar hearings on contested cases, meetings of the state lawyers assistance committees, the local lawyers assistance committees in accordance with the provisions of ORS 9.545, the multidisciplinary teams required to review child abuse and neglect fatalities in accordance with the provisions of ORS 418.747, the peer review committees in accordance with the provisions of ORS 441.055, mediation conducted under sections 2 to 10, chapter 967, Oregon Laws 1989, any judicial proceeding or to meetings of the Oregon Health Sciences University Board of Directors or its designated committee regarding candidates for the position of university president.***

(Emphasis added.)

The exemption in ORS 192.690(1) for "deliberations of state agencies conducting hearings on contested cases in accordance with the provisions of ORS 183.310 to 183.550" does not apply to meetings of SPRB. SPRB's sole role in the disciplinary process is to decide whether charges should be filed, but SPRB "does not decide the validity of those charges as a judicial body." OSB Desk Reference § 9.7 (1990). Moreover, the bar, and therefore SPRB as well, is not subject to ORS 183.310 to 183.550, but to the rules of procedure adopted by the Board of Governors of the Bar and approved by the Supreme Court. ORS 9.005(8), 9.010(1), 9.532.

We next consider whether SPRB meetings come within the exemption in ORS 192.690(1) for "judicial proceedings." Because the term "judicial proceedings" is not defined in the Public Meetings Law and has no precise technical or legal meaning, we look to its plain and ordinary meaning. See *Jones v. Hoss*, 132 Or 175, 285 P 205 (1930) and 46 Op Atty Gen 388 (1990) for other citations supporting this principle. We look to standard dictionaries for guidance as to the common meaning of words. Webster's Third New

International Dictionary (unabridged 1993), at 1223, defines "judicial" as "of, relating to, or concerned with a judgment, the function of judging, the administration of justice, or the judiciary," and "proceeding", at 1807, as "the course of procedure in a judicial action." The "judiciary" is defined as:

1a: a system of courts of law in an area * * *

2: a branch of government in which judicial power is vested * * * .

Id. at 1223. These definitions are broad enough to encompass the meetings of the SPRB as relating to the function within the judicial branch of judging attorney conduct for purposes of administering discipline.

The functions of the SPRB are consistent with the common understanding of the term "judicial proceeding". The SPRB is within the judicial branch, it has a role in the adjudicatory process of attorney discipline, and the decisions of the SPRB potentially culminate in a judicial decision by the Oregon Supreme Court. In *Ramstead v. Morgan*, 219 Or 383, 347 P2d 594 (1959), the Supreme Court considered the nature of attorney disciplinary proceedings to determine whether a complaint against an attorney was absolutely privileged against an action for libel. The court held that a statute limiting the privilege was unconstitutional as an infringement on the authority of the court.

Our conclusion rests upon the basic premise that disciplinary proceedings are carried on as one of the processes of this court. It makes no difference whether the process is denominated judicial or quasi-judicial; it is an integral part of the functioning of the judicial branch of government and the process includes the filing of an informal complaint by one who wishes to charge an attorney with unprofessional conduct.

219 Or at 400.

Although this exemption has not been discussed in any appellate court decisions, it is construed by two Attorney General opinions. In 40 Op Atty Gen 388 (1980), we were asked whether deliberations of a county court (board of county commissioners) following a quasi-judicial hearing were excluded from the Public Meetings Law by ORS 192.690. After reviewing opinions from other states, we concluded that the exemption did not apply. We stated:

Again, we believe if there is an ambiguity, it should be resolved in favor of open meetings. This appears to be in accord with the result reached by most courts considering whether a "judicial proceeding" exclusion should extend to quasi-judicial actions. Accordingly, we conclude that a quasi-judicial hearing of a governing body is not a "judicial proceeding" for purposes of the exception provided by ORS 192.690(1).

40 Op Atty Gen at 391.

The second opinion addressed whether a judicial district's advisory committee created by court rule must comply with the Public Meetings Law. The committee was formed to recommend attorneys to be appointed by the court to represent indigent defendants. 41 Op Atty Gen 417 (1981). Based upon our review of the legislative history of the "judicial proceedings" exemption, we stated:

The term "judicial proceedings" was intended to grant only a limited exemption to the courts, while engaged in such judicial proceedings as juvenile hearings, grand jury hearings and appellate court deliberations; but not to exempt other meetings within the judicial branch dealing with administrative or other nonadjudicative matters. We therefore conclude that meetings of the Committee fall within the scope of the Public Meetings Law.

Id. at 419 (citations omitted).

We also consider the legislative history of ORS 192.690 as an aid to our understanding of the scope of the term "judicial proceeding." The list of exempt activities in ORS 192.690 has changed since this statute's enactment in 1973. The original 1973 legislation, which adopted the first comprehensive public meetings law, provided as follows:

The provisions of this Act shall not apply to the deliberations of the State Board of Parole and Probation, the State Banking Board, the Commission on Judicial Fitness, of state agencies conducting hearings on contested cases in accordance with the provisions of ORS chapter 183, the review by the Workmen's Compensation Board of similar hearings on contested cases, or to any judicial proceeding.

Oregon Laws 1973, ch 172, § 9.

The original reference to deliberations of the Commission on Judicial Fitness (the commission), together with the exemption for judicial proceedings, appeared at first to be significant as guidance on the scope of the "judicial proceedings" exemption. The Commission on Judicial Fitness also performs an adjudicatory function for the Supreme Court and is part of the judicial branch of government. Or Const Art VII (Am), § 8; ORS 1.410 to 1.480. Arguably, if the legislature had believed that the commission's work was a "judicial proceeding," the legislature would not have needed to include a specific exemption for the commission. However, upon closer analysis we do not find the specific inclusion dispositive.

In 1973, when the Commission on Judicial Fitness was specifically included in ORS 192.690, proceedings of the commission were already closed to the public, except for hearings held publicly upon the request of the affected judge. ORS 1.420 (1973). In fact, in a statute concerning the commission's records, the legislature referred to the records and testimony at hearings as privileged, "except in judicial proceedings directly connected with the administration of ORS 1.410 to 1.480". ORS 1.440 (1973). This reference to judicial proceedings in connection with the function of the commission implies that the legislature considered their proceedings to be judicial proceedings.

In 1981, the Legislative Assembly removed the exemption for the Commission on Judicial Fitness from ORS 192.690. Oregon Laws 1981, ch 354, § 3. The purpose of the 1981 legislation was to make the hearings of the commission public. Or Laws 1981, ch 354, § 1. However, the 1981 amendments did not address proceedings of the commission other than hearings, and there is nothing in the legislation that directed the commission to hold public meetings for purposes other than hearings. In fact, it is clear that the commission could not meet publicly, because of specific direction that members of the commission and staff may not disclose any investigation, testimony or documents which are not introduced at a public hearing. Or Laws 1981, ch 354, § 2. We conclude that the specific inclusion of the Judicial Fitness Commission in the original 1973 legislation (and subsequent deletion) is not dispositive regarding the scope of the term "judicial proceedings" for purposes of bar disciplinary proceedings or the Public Meetings Law.⁽²⁾

From a review of the text and context of ORS 192.690, we conclude that meetings of the SPRB come within the Public Meetings Law exemption for judicial proceedings. Although we are required to construe the exemption narrowly, we find that the most persuasive interpretation of the term "judicial proceedings" encompasses proceedings initiated within the judicial branch which are adjudicatory in nature, and which are part of a process which ultimately may result in a judicial decision. The SPRB

meetings meet those criteria and are therefore exempt from the Public Meetings Law.

Sincerely,

Donald C. Arnold
Chief Counsel
General Counsel Division

1. "Governing body" is defined to mean "the members of any public body * * * with the authority to make decisions for or recommendations to a public body on policy or administration." ORS 192.610(3). A "public body is defined as "the state * * * or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof." ORS 192.610(4).

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2. In 1983, the Legislature created state lawyers assistance committees and local lawyers assistance committees. Oregon Laws 1983, ch 617. The legislation made meetings of these committees specifically exempt from the Public Meetings Law both by specific direction in the statute creating the committees and by addition of the committees to the exempted agencies in ORS 192.690. Or Laws 1973, ch 617, §§ 2, 4. Because the role of these committees is limited to "supervision and assistance to those lawyers whose performance or conduct may impair their ability to practice law or professional competence", their function is not adjudicatory, and the assistance committees would not qualify for an exemption as judicial proceedings. ORS 9.545. The specific reference to these committees in ORS 192.690 does not conflict with our conclusion regarding the SPRB.

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