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STATE CAPITOL
PHOENIX, ARIZONA

March 28, 1977

DEPARTMENT OF LAW OPINION NO. 73-6

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ARIZONA ATTORNEY GENERAL

REQUESTED BY: THE HONORABLE JIM SKELLY
Arizona State Representative

QUESTION: Do any of four separate actions if taken by the Board of Regents contravene Title 15 of the Arizona Revised Statutes or any other appropriate statute? The allegations listed in the request are as follows:

1. Failure to release Board agendas to the public prior to the Regents' meetings.
2. Forbidding the public to speak at the meetings without first obtaining the unanimous consent of the Board.
3. Approving several items at one time with little or no discussion, after having private sessions from which the public is excluded.
4. Taking action in public session with little or no discussion, after holding private sessions at which these actions were discussed and in some cases the Board members had already come to a decision as to how they would vote.

ANSWER: See body of opinion.

Nothing in Title 15 of the Arizona Revised Statutes precludes any of the above actions. If such actions do contravene any existing law, they must be prohibited by some provision of the public meeting statutes, A.R.S. §§ 38-431, et seq.

1. There are no statutory requirements concerning Board agendas. Generally, an agenda is prepared prior to the Board meeting for the convenience of the members of the Board. As a general practice, no other business is conducted

unless the Board votes to include other items. However, the use of agendas is strictly a matter of Board policy, and the public has no inherent or statutory right to see a copy of the Board's agenda. It is our understanding that the Regents' agendas are put together by the Regents' staff and the three University Presidents. We understand that the Board has decided to attempt to provide the press and the public with copies of agendas in advance of their meetings. It is our opinion that nothing in the existing law requires the Regents to provide advance copies of these agendas. Any decision of the Board to do so would be voluntary on their part, and not required under existing law.

2. There are no provisions in the public meeting statutes which require the Regents to allow the public to speak at regular Regents' meetings. A.R.S. § 38-431.01 provides only that the public shall be permitted at meetings at which legal action is taken, to attend such meetings, and to listen to the deliberations and proceedings. The decision as to whether persons shall be allowed to address the Regents and under what conditions is solely within the Regents' discretion. We are informed by the Regents' staff that a unanimous vote of the Board is necessary before any member of the public is allowed to address them. Persons wishing to communicate with the Regents are encouraged to do so in writing. This office finds nothing illegal or prohibited in this practice.

3. Questions 3 and 4 seem to be directed to the propriety of closed Board meetings. However, Question 3 contains the additional element of voting on more than one item with a single vote. Therefore, we will deal with the question of multiple voting in this section and cover executive sessions in the following section.

We have been informed by the Regents' staff that the Regents do, on occasion, take more than one action by a single vote. This is done by voting on agenda items which cover more than one subject. The staff informs us that wherever possible the agenda is grouped to allow the Board to decide policy and implement that policy by taking the actions necessary therefor by a single vote. This is a time saving device to allow the Regents to make policy decisions without voting on all of the elements necessary to carry out that policy. There is no statutory prohibition preventing this type of vote.

It is assumed that each member has studied his agenda and that, if a member wishes, he may question any item being voted on or ask for a separate vote on each item. Further, any member can vote against any separate item. It is therefore our opinion that taking several actions by a single vote is not prohibited by the Arizona statutes.

4. The last question seems to be the pivotal issue raised by the request. Stripped to its essential elements, the question is: "What may a board do in meetings closed to the public, and when must the public be admitted to board meetings?"

Most boards have developed a set procedure in an attempt to comply with the public meeting law. In education, and more particularly at the state level, boards conduct their business in three different types of meetings. These meetings have evolved due to the amount of work the boards are required to perform. Education in Arizona is big business, using approximately 72% of the entire state budget, and these boards now run the equivalent of giant corporations. For this reason, most boards conduct study sessions, executive meetings and public meetings. In the case of the Regents, study sessions are generally conducted by Board appointed committees, who are assigned specific policy matters and who, after studying such matters, report to the Board as a whole.

Thus, the entire Board rarely meets in a study session and, consequently, no action is taken by the Board at these sessions. Executive sessions are generally held immediately prior to the open sessions. In these sessions the Board deals with personnel matters, hears reports from its staff, firms up its agenda and receives communication from its legal advisers. There is no question that all of these activities are permitted by A.R.S. §§ 38-431, et seq. However, the Board may also discuss contemplated actions and debate policy and, by doing so, the members may know prior to the public meeting how a particular vote will go. Further, if the action to be taken is one which raises no dissent among the Board members, there may be little or no discussion at the public meeting prior to the Board's vote.

It is this Board procedure which is questioned, and which presents the greatest difficulty in legal interpretation. The present statutes are ambiguous as to the legal limits of the executive meeting. A.R.S. § 38-431.01 states:

All official meetings at which any legal action is taken by governing bodies shall be public meetings and all persons so desiring shall be permitted to attend and listen to the deliberations and proceedings. All minutes of such meetings as are required by law shall be properly and accurately recorded and open to public inspection except as otherwise specifically provided by statute.

Statutory wording indicates that the public need be admitted only to board meetings at which legal action is taken. Further, the public is only entitled to listen to the proceedings at this open session. The problem created by this statutory language is that "legal action" is not defined. In fact, the statutes create a type of circular reasoning. No legal action shall be taken except at a public meeting (A.R.S. § 38-431.01). Any action other than those specifically allowed by statute is illegal if the public is excluded from the meeting (A.R.S. § 38-431.04).

As you can see, the statutes are self-executing. It is impossible for the Board to take legal action at other than a public meeting and, technically, the Board may discuss any matter it wishes in private, so long as the Board does not try to take legal action. Because of that conundrum, our office has advised that boards may hold private sessions so long as the board and its staff make no attempt to act without first voting on the proposed action in a public meeting. It may be that this method of conducting board business bruises the spirit of the law, but it does fall within the letter of the law.

It is our belief that, if this result was not the Legislature's intent when the public meetings act was passed, remedial legislation will be necessary to correct the matter.

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As a starting point, we suggest you may wish to look at California's open meeting statutes contained in Governmental Code, Sections 11120, et seq., which define legal action and provide a method for the public to obtain advance notice of the purpose of meetings.

However, under the present law in Arizona, it is our opinion that the actions which you question are not prohibited by any provision of the Arizona Revised Statutes.

Respectfully submitted,



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The Attorney General

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