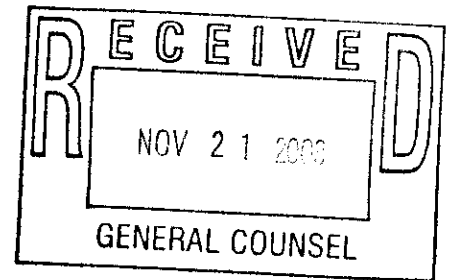




DEPARTMENT OF JUSTICE
GENERAL COUNSEL DIVISION

MEMORANDUM



DATE: November 14, 2003

TO: Ms. Melinda Grier, General Counsel, University of Oregon

FROM: Elizabeth Thomson Denecke, Assistant Attorney General^{ETD}
Education Section

SUBJECT: University Assembly Quorum Issue

QUESTION PRESENTED

You have asked if the Faculty Senate has the authority to make decisions on the rules of the University Assembly, including the number required for a quorum. You have also asked me whether the University of Oregon Assembly can change its quorum requirements from one-half of their number plus one to a lower number to enhance the effectiveness of the body.

ANSWER

The decision of what constitutes a quorum, absent a specific enabling statute that provides differently, is made by state law, which dictates that a quorum will be one-half plus one of the membership in the body. While the Faculty Senate has the authority to make decisions on the rules of the Assembly, it does not have the authority absent specific statutory mandate to change the number required for a quorum.

DISCUSSION

The Presidents of each of the institutions of the Oregon University System have the position as President of the Faculty of each institution. ORS 352.004 The President and professors constitute the faculty of each institution and have responsibility for the government and discipline of the institution and the students. ORS 352.010

Enabling legislation in 1995 established the University Senate as the "sole governing body of the University in all matters of faculty governance (Enabling Legislation, paragraph 2.) For that reason, the University Senate has been given the implied authority to makes rules governing the functions of the University Assembly, subject to those powers granted to the Assembly in the enabling legislation. Those powers include: 1) any subject can be discussed by the Assembly (Enabling Legislation 6.4.); and, 2) the Assembly may refer legislation passed by

the Senate back to the Senate for reconsideration with a recommendation. (Enabling Legislation 6.5.) On this basis, it appears that when the enabling legislation was passed in 1995, it was contemplated that the governing body of the faculty would be the University Senate, subject to these two exceptions, and that the Senate would have the authority to make rules governing the Assembly. The University Assembly is not given the power to make rules regarding its governance in the enabling legislation. Such powers would have to be granted by the Senate, or by amended enabling legislation.

The statute governing quorums and voting requirements for any public group that does not have an alternative statutory provision is ORS 174.130, which provides: "Any authority conferred by law upon three or more persons may be exercised by a majority of them unless expressly otherwise provided by law."

The bylaws of the University Senate (Bylaw 4.8) acknowledge this statutory requirement in their governance in requiring one more than half of the total of 48 Senators to constitute a quorum. The bylaws could not do otherwise absent a statutory exception applicable to the group. ORS 174.130; Atty Gen Public Meetings Manual at 103 (2001.) Likewise, the University Assembly has no statutory exception to the quorum requirement, and therefore would require compliance with the ORS 174.130 requirement. This policy is well established in Oregon law, having been the subject of advice from the Attorney General as long ago as 1974. 36 Op Atty Gen 960 (1974.) The Legislature has been informed of the impact this rule has on efficiency, and has not chosen to change the rule. Atty Gen Public Meetings Manual, App.C-3 (2001.) Both the Assembly and the Senate are bound by this rule as to quorum requirements.

In conclusion, it is apparent that the 1995 Enabling Legislation provided that the primary governing body for the University Faculty would be the University Senate. The Senate was also given authority to make rules governing the University Assembly. However, the Senate cannot make a rule changing the quorum requirement, since that requirement is mandated by statute.