

# Minutes of the Statutory Faculty Meeting May 6, 2009

## CALL TO ORDER

University President Dave Frohnmayer, presiding officer, called the meeting of the Statutory Faculty to order at 3:43 p.m. in room 150 Columbia. The president indicated that IMD 1.123 of the Board of Higher Education provided the president's authority to convene the meeting and set the agenda, which has been developed with the University Senate president and president-elect, and the Faculty Advisory Council. He thanked the faculty for attending the meeting, noting that the last recorded Statutory Faculty meeting was in 1974.

## APPOINTMENT OF PARLIAMENTARIAN AND SECRETARY

As the first order of business, the president appointed Paul Simonds, anthropology emeritus, as the parliamentarian and Gwen Steigelman, academic affairs, as secretary for the meeting which would be governed by Roberts Rules of Order, 10<sup>th</sup> edition. There were no objects to both these appointments. The secretary noted that there were 107 statutory faculty members in attendance, thus the quorum was established and 54 votes were required to pass any majority vote motions.

## INTRODUCTORY REMARKS

The president noted that there were a number of interacting purposes that necessitated the meeting. He indicated that an informal town hall would follow to address some changes in governance. The president explained that under IMD 1.123, every time an institution changes its leadership the new president is entitled to designate the new form of governance. The incoming new president, Richard Lariviere, has indicated his full engagement in this process. President Frohnmayer continued, saying that a number of governance questions have arisen, such as the quorum requirement and legitimacy of the delegation of authority, as the both the University Assembly and University Senate have expanded their memberships. The Attorney General has reexamined these issues, noting that the governance charter codified in statutes refers to the president and the professors as constituting the faculty that is vested with governance authority, which can be delegated, but that ultimately the statutory faculty retains the ability to withdraw or recalibrate those delegated authorities.

President Frohnmayer next recognized Mr. Gordon Sayre, English, who provided a chronology of the changes in governance that in part led up to the need for the current meeting (see <http://www.uoregon.edu/~assembly/dirSF/dirExtra/GS-1May09.html>) itemized as follows:

- 1876 University of Oregon Charter, Section 14, (codified as ORS 352.010) provides that: "The President and professors constitute the faculty of the University, and, as such shall have the immediate government and discipline of it and the students therein.
- 1974 Student members are included in the Assembly for the first time. [At some later time] Officers of Administration are included in the Assembly.
- 2003 February 27th UO Assembly meeting called to consider a resolution against the Iraq War and held in the Student Recreation Center, fails to meet a quorum of half the total membership of the Assembly, which includes all "officers of instruction, librarians, officers of administration" numbering more than 1500 people.

- 2008 February 13th Senate Meeting Motion US 07-08 - 10, sponsored by Frank Stahl, is adopted:
  - BE IT RESOLVED that the Senate President seek timely clarification (with arguments) from the Attorney General regarding the following issues: (1) Is a UO Assembly with legislative power (approximately 2,000 members) able to pass a motion only by affirmative vote of a majority of its membership, and (2) If so, how does such a UO Assembly differ from other governing bodies, such as City Councils, School Boards, etc., for which legislation is enacted by an affirmative vote of a majority of the members present (given that the quorum requirement has been met)?
- 2008 March 24th in response to the motion, Senate President Gordon Sayre sends letter to Oregon Attorney General's office.
- 2008 July 28th, Nov. 7th Donald Arnold, Chief Counsel, replies with a draft, and then a final opinion. It provides that:
  - "The Assembly may pass a motion by an affirmative vote of a majority of its members present at a proper meeting, even if less than fifty percent of the total membership is present" (page 1) but also "the statutory faculty has effectively ceased to exist as a body, having been replaced over the years by the Assembly." "The Assembly consists of 'all University of Oregon officers of instruction, librarians, and officers of administration' and a fixed number of students. By contrast, the ORS 352.010 faculty is a less inclusive group, i.e. the 'president and the professors.'" (page 12) "The statutory faculty probably may delegate all or part of its ORS 352.010 powers to a separate body such as the Assembly" and "the apparent intent behind the decision to include non-faculty members in the Assembly was not to delegate authority to the Assembly but rather to treat the Assembly as the statutory faculty" (page 14)
- 2009 May 6 Statutory Faculty Meeting is convened, following the membership and quorum requirements articulated in the Oregon DOJ opinion. As President Frohnmayer wrote in calling today's meeting, the opinion recommends that "the faculty take action to delegate the faculty's statutory powers to the University Senate and that the faculty take action to ratify all past acts of the University Senate."

Mr. Sayre clarified that the Attorney General wrote that only the statutory faculty can be the governing board of the university; thus, this meeting is called for the restricted membership of the statutory faculty to re-legitimize the governing bodies we have operated under since 1974.

During a brief discussion, Mr. Paul Engelking, chemistry, asked for clarification of the legitimacy of the votes taken since 1974 by both the University Senate and the Assembly. President Frohnmayer responded that it is the view of the Attorney General that we take action on the motions to come before the group at this meeting out of an abundance of caution. He said that the Attorney General would be prepared to defend the legality of actions taken by both groups in the past, but as a caution, the statutory faculty should meet to ratify those actions, thus there are two proposed motions: one to ratify the delegation of authority, and one to ratify past acts. Ms. Anne Mc Lucas, music, asked if ratifying action of the senate meant taking back the inclusive membership of the senate. President Frohnmayer responded saying that the intention of the motions is to legitimize the status quo and to allow an appointed committee, in conjunction with the incoming president, to provide a new governance document which would provide clarity with actions taken by the statutory faculty for the continuation of governance. The rights and prerogatives of a more representative university body would be determined by this study group.

Mr. Frank Stahl, biology emeritus, commented that no motion had been brought forward yet. President Frohnmayer agreed, but said that he had some further remarks to make regarding the motions that were on

the agenda. In continuing his introductory remarks, the president said that Mr. Stahl and Mr. Nathan Tublitz, biology, have developed governance materials and have given notice of motion, which were part of the materials made available to the statutory faculty prior to the meeting. The president noted that in that motion is the establishment of a faculty oversight committee, a new body whose relation to the existing Faculty Advisory Council is not clear, and one which would require an election to be held this year; and, the new body would be required to meet and would leave some people unrepresented in the authority to ratify or reject actions of the Senate. Second, there was an omission to a reference to the Oregon Public Meeting Law -- some actions may deal with externally required actions, so public meetings law might apply. A third issue was formalization about veto requirements that are contrary to IMD 1.123. Thus, the president said for these reasons he declined to include that motion as part of this meeting.

### **MOTION SF08/09-1 – TO LEGITIMIZE THE UNIVERSITY SENATE**

President Frohnmayer recognized University Senate President Paul van Donkelaar who first noted that the University of Oregon recognizes the scope of faculty governance prescribed by the Oregon State Legislature and the Oregon State Board of Higher Education (see <http://www.uoregon.edu/~assembly/dirSF/dirExtra/T29Apr09-1.pdf> and <http://www.uoregon.edu/~assembly/dirSF/dirExtra/T29Apr09-2.pdf>), and moved Motion SF08/09-1 to legitimize the University Senate (second by Mr. Peter Gilkey, mathematics) as follows:

***Preamble:* The department of Justice has provided an opinion (OP-6735) in response to a letter from 2007-08 University Senate President Gordon Sayre concerning the quorum and voting requirements of the University Assembly. The opinion recommends, as an important first step, that the faculty delegate the exercise of its statutory powers to the University Senate.**

***Whereas,* the ruling of the department of Justice (OP-6735) clearly states that this step is desirable to conduct the affairs of the present University Senate in a manner that leaves its actions free from challenge in its exercise of previously delegated authority;**

***Be it moved that,* the statutory faculty delegates the exercise of its statutory powers to the University Senate and ratifies the version of the Senate Charter, enabling legislation, and bylaws as amended that exists as of 28 April 2009.**

(See <http://www.uoregon.edu/~assembly/dirSF/dirExtra/SenateCharter28April09.html>).

As the debate began, Mr. Stahl moved to postpone the motion (seconded by Mr. Tublitz), and went on to state a number of shortcomings of the 1995 legislation that created the currently used form of governance. Mr. van Donkelaar spoke against postponing saying that the Department of Justice, in its November 21, 2008 memo, was willing to defend the effectiveness of the 1995 enabling legislation. Mr. Tom Dyke, chemistry, also spoke against the motion to postpone, saying that he was dismayed to learn the Assembly meetings he attended might be considered illegal. He felt that the motion to legitimize the Senate is prudent, essentially a housekeeping motion to legitimize past efforts.

Ms. Louise Westling, English emeritus, spoke in support the motion to postpone because she would oppose SF08/09-1 in its delegation of authority to the Senate. Mr. Tublitz spoke in favor of postponement. He expressed concern about President Frohnmayer's introductory remarks, in that they had a chilling effect by not including all motions on the agenda. Mr. Tublitz also was disturbed that individuals were limited to only two opportunities to speak on a motion, saying that it was not in keeping

with collegial discussion. Lastly, he said that although he supports the idea of legitimizing the UO Senate, he did not feel comfortable with accepting the enabling legislation.

Parliamentarian Simonds clarified that according to Roberts Rules of Order, while the group is debating a motion everyone has a right to a first presentation, and then a right to speak a second time, but no right to speak a third time to the same motion.

Mr. Ted Toadvine, environmental studies, wondered about the timeline for revising the current enabling legislation if adopted. President Frohnmayer clarified that the statutory faculty can never give up its authority irrevocably. So even if this meeting is silent about the future, the plenary authority remains unabated. The president said he is giving notice that the next Statutory Faculty meeting is scheduled for 3:30 p.m. on Wednesday, November 18, 2009. President Richard Lariviere will convene that body. President Frohnmayer said it was his intention to name Senate President van Donkelaar as chair of a small revision group to prepare a document and give a progress report to the statutory faculty at the November meeting, and that he would confer with faculty leaders as to the appropriate persons to comprise the revision group.

Ms. Lisa Freinkel, English, spoke against the motion to postpone, and urged passage of the other two main motions so as not to jeopardize past work of the Senate nor the conferring of degrees to students; postponing does not fix the problem she said.

In support of his motion, Mr. Stahl said that his hope was that the statutory faculty might meet again in one week's time or so by which time faculty would have had the chance to look at the work he and Mr. Tublitz have prepared. Further, the reason for postponing is so the faculty at large could get up to speed before the November meeting. In 1995 a document was presented to the faculty; the document that was adopted contained ambiguities, thus he asked the faculty that they vote to postpone.

**The motion to postpone was put to a vote. With only 14 in favor, the motion was declared failed. The main motion SF08/09-1 was again on the floor for debate.**

Continuing the discussion on the main motion, Mr. Toadvine wondered if a committee could be convened by the Senate rather than being appointed. Senate President van Donkelaar replied that that was his intention for this academic year but a number of issues intervened and we did not get around to it. He opined that there should be a goal of November to provide a starting base for some of the revisions Mr. Stahl has suggested. President Frohnmayer added that IMD 1.123 specifies that the President shall develop the version of faculty governance, and that under our system of collaborative process, the new incoming President wishes to work with faculty leadership on this point.

Mr. Stahl spoke in opposition to the main motion saying that by giving credibility to the 1995 governance document one runs the risk of continuing the chaos that document created. Lastly, Ms. Westling asked if, and received affirmative confirmation, that the Department of Justice had assured the university that it would defend any challenges to the current governance arrangement.

**With debate winding down, Motion SF08/09-1 to legitimize the University Senate was put to a vote, with 84 in favor of the motion, and 11 opposed. The motion is carried.**

#### **MOTION SF08/09-2 – TO RATIFY ALL PAST ACTS OF THE UNIVERSITY SENATE**

President Frohnmayer next recognized Mr. Gilkey who moved SF08/09-2 to ratify all past acts of the University Senate (second Mr. van Donkelaar) as follows:

***Preamble:*** The Oregon Department of Justice opinion (OP-6735) concludes that the delegation of authority from the statutory faculty to the University Senate cannot be clearly established. To ensure that the motions and resolutions that have been passed by the University Senate carry the authority of the statutory faculty, it is prudent for the statutory faculty to ratify all of the past acts of the University Senate.

***Whereas,*** The statutory faculty delegates its authority to the University Senate,

***And, whereas,*** The past acts of the University Senate should carry the full and unambiguous delegated authority of the statutory faculty,

***Be it moved that,*** The Statutory Faculty hereby ratifies all past acts of the University Senate.

Professor Gilkey spoke in favor of the motion, saying that the motion simply was to legitimize acts of the Senate taken in good faith. Mr. Stahl indicated that, as written, he was opposed to this motion. Mr. Engelking then moved to amend the motion by adding the words, “*and Assembly*” to the motion after the words “University Senate”. Mr. Stahl seconded Mr. Engelking’s amendment. **The motion to amend SF08/09-2 was put to a vote with 74 in favor and 10 opposed. The amendment carried.**

The main motion, as amended, was again on the floor. Since there was no indication of a desire for further debate, **Motion SF08/09-2 to ratify all past acts of the University Senate *and Assembly*, was put to a vote. The vote was 97 in favor of the motion as amended, and 3 opposed. Motion SF08/09-2, as amended, carried and final version reads: The Statutory Faculty hereby ratifies all past acts of the University Senate and Assembly.**

## **ADJOURNMENT**

With no other business at hand, President Frohnmayer announced again that he anticipates having the next meeting of the Statutory Faculty fall term on November 18, 2009 at 3:30 with President Richard Lariviere presiding. Mr. Gilkey moved to adjourn, and with a voiced second and voice vote in the affirmative, the meeting was adjourned at 4:43 p.m.

Gwen Steigelman  
Secretary of the Faculty