



The University of Georgia

Office of Legal Affairs

February 23, 2018

MEMORANDUM

To: Dr. Mary A. Bedell
President, Franklin College of Arts and Sciences Faculty Senate

From: Michael M. Raeber 
General Counsel

RE: Application of the Georgia Open Meetings Act to the Franklin College of Arts and Sciences Faculty Senate Meetings

It has come to my attention that the Franklin College of Arts and Sciences Faculty Senate has recently closed portions of its monthly meetings for “special sessions” limited to Senators and Proxies only. The purpose of this memorandum is to provide you with a summary of the Georgia Open Meetings Act and its application to meetings of the Franklin Faculty Senate.

The Georgia Open Meetings Act provides that “all meetings . . . shall be open to the public” and applies to “[e]very state department, agency, board, bureau, commission, and authority.” O.C.G.A. § 50-14-1(b), O.C.G.A. § 50-14-1(a)(1)(A). The Act defines a meeting as “the gathering of a quorum of the members of the governing body of an agency at which any official business, policy, or public matter of the agency is formulated, presented, discussed or at which official action is to be taken.” O.C.G.A. § 50-14-1(a)(3)(A)(i). This definition of meeting also applies to actions of committees of the agency. O.C.G.A. § 50-14-1(a)(3)(A)(ii). In interpreting these provisions, courts have held that the Act “must be broadly construed to effect its remedial and protective purposes.” *Atlanta Journal v. Hill*, 257 Ga. 398, 399, 359 S.E.2d 913, 914 (1987).

The test for applicability of the Open Meetings Act to a meeting is two-pronged: (1) Is the meeting one of a “governing body or of an agency” or any committee thereof? and (2) Is the meeting one “at which official business or policy of the agency is to be discussed or at which official action is to be taken?” *Red & Black Publ’g Co. v. Board of Regents*, 262 Ga. 848, 853, 427 S.E.2d 257, 262 (1993).

As to the first prong, Georgia courts have long held that the Board of Regents and its universities are state agencies or bodies for the purposes of the Georgia Open Records Act and the Georgia Open Meetings Act. *Red & Black Publ’g Co.*, 262 Ga. 848, 427 S.E.2d 257, 259 (citing *Board of Regents v. Atlanta Journal*, 259 Ga. 214, 378 S.E.2d 305 (1989)).

As to the second prong, the general rule is that official action is action which is taken by virtue of the power granted by law, or by virtue of the office held, to act for and on behalf of the State. *McLarty v. Board of Regents*, 231 Ga. 22, 200 S.E.2d 117 (1973). A review of the policies of the Board of Regents and the University of Georgia establish that the Faculty Senate of the Franklin College is the vehicle through which the Franklin College carries out responsibilities delegated by the Board of Regents to the University of Georgia and its schools and colleges. The Board of Regents Policy Manual, Section 3.2.4 "Faculty Rules and Regulations," states, "The faculty, or the council, senate, assembly, or other comparable body at an institution shall, subject to the approval of the president of the institution: (1) Make statutes, rules, and regulations for its governance and for that of the students; (2) Provide such committees as may be required; (3) Prescribe regulations regarding admission, suspension, expulsion, classes, courses of study, and requirements for graduation; and (4) Make such regulations as may be necessary or proper for the maintenance of high educational standards." The University of Georgia encompasses these policies in its Academic Affairs Policy Manual by stating that "[e]ach school and college shall adopt a schedule for regularly held meetings of its faculty." (Section 1.05-2, Academic Affairs Policy Manual.)

The Franklin College, by and through its Bylaws, establishes general meetings of its entire Faculty and also establishes a "Faculty Senate" with regular meetings once each month during the academic year. (Article I, Section 1, and Article II, Bylaws, Franklin College of Arts and Sciences.) Article II, Section X of the Bylaws of the Franklin College establishes that the purpose of the Senate is to "act as the agent of the Faculty" and presents a list of its duties, which include considering and acting upon matters of educational policy of the College and authorizing the granting of degrees to students. The Faculty Senate also makes policy recommendations impacting the College as a whole and assists and advises the Dean on matters of importance to the College, which can include the structure and organization of the College.

Because the Franklin College Senate meets both prongs of the Open Meetings Act, its meetings must be open to the public, and the requirements of the Georgia Open Meetings Act must be met by the Faculty Senate regarding notice of the meeting, publishing of the agenda, and recording of minutes as set forth in O.C.G.A. § 50-14-1(b)-(g).

There are limited exceptions to the Georgia Open Meetings Act allowing for the closure of meetings. Portions of meetings may be closed lawfully for "executive sessions" in order to discuss or vote on the following topics: (1) Authorizing the settlement of any matter which may be properly discussed in executive session in accordance with O.C.G.A. § 50-14-2, which allows for the discussion of current or pending litigation with counsel; (2) Authorizing negotiations to purchase, dispose of, or lease property; (3) Authorizing the ordering of an appraisal related to the acquisition or disposal of real estate; (4) Entering into a contract to purchase, dispose of, or lease property subject to approval in a subsequent public vote; and (5) Entering into an option to purchase, dispose of, or lease real estate subject to approval in subsequent public vote. O.C.G.A.

§ 50-14-3(b)(1). A meeting may also be closed to discuss or deliberate on certain employment matters. O.C.G.A. § 50-14-3(b)(2).¹

A review of the published Agenda and Minutes for your January, 23, 2018, meeting shows that as part of the Senate's "New Business" a special session was called to "discuss the effectiveness of the Franklin Faculty Senate procedures and practices (in accordance with Section 3 of the Senate Bylaws). This session is open to Senators and Proxies only." (Tuesday, January 23, 2018 Agenda, attached.) The published Minutes of that January 23, 2018 meeting state under "New Business" that "[t]he Special Session to discuss the effectiveness of the Franklin Faculty Senate procedures and practices will begin immediately after the regular meeting is adjourned." (Franklin Senate, Minutes of the meeting on January 23, 2018, attached.) The Franklin Senate published a summary of that closed meeting. This summary indicates that the matters disclosed at the closed meeting concerned a discussion of the Senate meeting charges (c) and (d) set forth in Article II, Section X of the Bylaws and also indicates that a vote was taken in the closed meeting to have another closed "Special Session" in February. (Summary of January 23, 2018 Special called Session, attached.)

Based on the information set forth in the Agendas and Minutes attached to this Memorandum, it appears that the Franklin Faculty Senate did not comply with the Open Meetings Act by closing portions of its January meeting. The reasons given for the closure of the meeting do not fall under the limited exceptions of O.C.G.A. § 50-14-3(b)(1). Additionally, the requirements for closure as set forth in O.C.G.A. § 50-14-4 do not appear to have been met.

Please ensure that the Faculty Senate of the Franklin College of Arts and Sciences is complying with the Open Meetings Act moving forward. If you have any questions, please let me know.

cc: Alan Dorsey, Dean, Franklin College of Arts and Sciences

¹ O.C.G.A. § 50-14-4 governs the closure of meetings. A meeting may only be closed to the public by a majority vote of the quorum present for the meeting. The minutes shall reflect the names of the members present and the names of those voting for the closure along with the specific reason for the closure. If a meeting is closed to the public pursuant to these procedures, the person presiding over the closed meeting must execute and file with the official minutes of the closed meeting a notarized affidavit stating that the subject matter of the closed meeting was devoted to matters within the exemptions allowed by law and identifying the specific, relevant exemptions used to close the meeting.