

November 28, 1990

Mr. Eric Love, President  
Associated Students of Boise State University  
Boise State University  
1910 University Drive  
Boise, ID 83725

**THIS CORRESPONDENCE IS A LEGAL GUIDELINE OF THE  
ATTORNEY GENERAL SUBMITTED FOR YOUR GUIDANCE**

Re: ASBSU/Idaho Open Meeting Act

Dear Mr. Love:

By your letter dated October 24, 1990, you asked the following questions:

1. Is the Associated Students of Boise State University required to comply with Idaho Open Meeting Act?
2. Are senate, senate committees, executive branch, ASBSU judiciary meetings required to be held in public?
3. Can there be closed meetings?
4. As stipulated in the ASBSU Constitution, can the senate meet in executive session removing all non-members of the senate?

The answer to your first question is the key to answering the remaining questions. That is, if ASBSU is not subject to the Open Meeting Act, Idaho Code §§ 67-2340, *et seq.*, then the meetings of the various groups which you have listed are subject only to any requirements set forth in the ASBSU Constitution, rules, by-laws or other applicable organizational policies.

In its preface to the Open Meeting Act, the Idaho Legislature declared "that it is the policy of this state that the formation of public policy is public business and shall not be conducted in secret." Idaho Code § 67-2340. More specifically, with respect to conducting public business in the open, the legislature declared:

- (1) All meetings of a governing body of a public agency shall be open to the public and all persons shall be permitted to attend any meeting

except as otherwise provided by this act. No decision at a meeting of a governing body of a public agency shall be made by secret ballot.

Idaho Code § 67-2342(1) (emphasis added).

The definitions of the terms used in the statute are critical in determining whether ASBSU or any of its organizations are subject to the Act.

"Meeting" means the convening of a governing body of a public agency to make a decision or to deliberate toward a decision on any matter.

Idaho Code § 67-2341(5) (emphasis added).

"Governing body" means the members of any public agency which consists of two (2) or more members, with the authority to make decisions for or recommendations to a public agency regarding any matter.

Idaho Code § 67-2341(4) (emphasis added).

"Public agency" means:

(a) any state board, commission, department, authority, educational institution or other state agency which is created by or pursuant to statute, other than courts and their agencies and divisions, and the judicial council, and the magistrates commission;

(b) any regional board, commission, department or authority created by or pursuant to statute;

(c) any county, city, school district, special district, or other municipal corporation or political subdivision of the state of Idaho;

(d) any subagency of a public agency which is created by or pursuant to statute, ordinance, or other legislative act.

Idaho Code § 67-2341(3) (emphasis added).

Reading the statute, including the definitions as a whole, only meetings of governing bodies of public agencies which are created by or pursuant to statute or the Idaho Constitution (*see* Idaho Atty. Gen. Op. 85-9) are subject to the Act. In this case, the "public agency" is Boise State University, *i.e.*, the "educational institution" which is "created by or pursuant to statute." The "governing body" of Boise State University is,

by statute, the State Board of Education acting as trustee of Boise State University. Idaho Code § 33-4002. ASBSU would not be considered the governing body of Boise State University (*see Idaho Water Resources Board v. Kramer*, 97 Idaho 535, 548 P.2d 35, 72 (1976) (an administrative committee of state water resources board "does not constitute the governing body of the state water resources board with authority to make decisions for or recommendations to the board as these terms are defined"); *The Minnesota Daily v. University of Minnesota*, 432 N.W.2d 189 (Minn. App. 1988) (presidential search committee held not to be "governing body" of University of Minnesota under statute similar, but broader than Idaho Open Meeting Act), nor would ASBSU be considered a "public agency" or "subagency of a public agency" apart from Boise State University since it is not created by statute or the Idaho Constitution. Idaho Code §§ 33-4001 to 33-4007, the statutes creating Boise State University and establishing the powers and duties of its board of trustees, make no mention of ASBSU or similar student organizations. Based upon the ASBSU Constitution which you forwarded to our office, it appears that ASBSU is an internal, student-created organization.

In conclusion, it is our opinion that ASBSU is not subject to the Idaho Open Meeting Act, but rather, is subject to its own constitution, by-laws and regulations. However, the Act does establish a laudatory policy that public business be conducted in public. Certainly ASBSU could, by way of its own constitution or rules, voluntarily choose to incorporate its provisions.

Sincerely,

BRADLEY H. HALL  
Deputy Attorney General and  
Chief Legal Officer,  
State Board of Education