



# OKLAHOMA

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[Previous Case](#)   [Top Of Index](#)   [This Point in Index](#)   [Citationize](#)   [Next Case](#)   [Print Only](#)

### Question Submitted by: J. Edd New, CPA, Chairman, Oklahoma State Board of Public Accountancy

1983 OK AG 290

Decided: 03/20/1984

Oklahoma Attorney General

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Cite as: 1983 OK AG 290, \_\_ \_\_

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¶0 The Attorney General has received your request for an official opinion asking in effect:

1. **Whether the Oklahoma State Board of Public Accountancy is required to deliberate in open meeting following a public hearing upon a complaint brought against a registrant for disciplinary action?**
2. **If the answer to the first question is in the negative, may the Board's legal counsel be present in the closed session to consult with the Board with respect to legal issues raised during the public hearing?**

#### I.

¶1 The first open meeting statute was enacted by the Oklahoma Legislature in 1969. 25 O.S. 201 (1959). The statute was amended in 1961, 1967 and again in 1971. It was subsequently repealed in 1977 and replaced with the current Open Meeting Act. 25 O.S. 301 et seq. (1981). Both the former and current laws required all meetings of public bodies to be conducted in open meeting. 25 O.S. 201 (1971) and 25 O.S. 303 (1981). Both the former and current laws enumerated those matters that public bodies could discuss in executive session, neither of which included executive session for the purpose of deliberations following an individual proceeding (public hearing). 25 O.S. 201 (1971) and 25 O.S. 307 (1981). However, prior to the repeal of the former open meeting law, the Oklahoma Supreme Court, in *Stillwater Savings & Loan Association v. Oklahoma Savings and Loan Board*, 534 P.2d 9, 11 (Okla. 1975), was presented with the issue concerning whether the former Open Meeting Law applied to the Oklahoma Savings and Loan Board when it acted in a "quasi judicial" manner in individual proceedings. The Court concluded that:

"The 'Open Meeting Law,' which was enacted in 1959, does not include hearings before the Oklahoma Savings and Loan Board *when it acts in a quasi judicial manner* in individual proceeding such as the present case." (Emphasis added).

¶2 *Black's Law Dictionary*, 5th Ed., p. 1121 defines "quasi judicial" as:

"A term applied to the action, discretion, etc., of public administrative officers or bodies, who are required to investigate facts, or ascertain the existence of facts, hold hearings, and draw conclusions from them, as a basis for their official action, and to exercise discretion of a judicial nature."

*See also, Board of County Com'rs of Atoka County v. Cypert*, 166 P. 195, 198 (Okla. 1917).

¶3 Thus, the resolution of your first question depends upon whether the Oklahoma Supreme Court's decision in *Stillwater*, supra, decided under the former Open Meeting Law (25 O.S. 201 (1971)), is still valid under the current Open Meeting Act when an agency acts in a "quasi judicial" manner in an individual proceeding.

¶4 It should be noted that in 1979, the Attorney General issued A.G.Opin. No. 79-32, which addressed the same issues as raised by your opinion request. The opinion concluded that pursuant to the express language of the New Open Meeting Act (25 O.S. 307 (1978)), the Board of Public Accountancy is required to deliberate in open meeting following a hearing, brought against a registrant for disciplinary action. The opinion did not address the *Stillwater* case, but apparently considered all cases decided prior to the repeal of the former Open Meeting Law to be overruled by the enactment of the new Open Meeting Act.

¶5 The latest expression concerning the continued viability of the *Stillwater* decision can be found in the case of *Niel R. Monson v. State of Oklahoma ex rel. Oklahoma Corporation Commission*, 673 P.2d 839 (Okl. 1983). The issue in *Monson*, supra, was whether the Corporation Commission (a constitutionally created agency) violated the Open Meeting Act when it failed to deliberate and vote in open session upon an application to drill a salt water disposal well. Although the Monson Court noted at footnote 10, that its opinion did not deal with the applicability of the Open Meeting Act to legislatively created administrative agencies when they perform adjudicative functions, the Court also particularly noted that:

". . . nor do we intimate a negative view upon the continued viability of our pronouncement in *Stillwater Savings and Loan Association v. Oklahoma Savings and Loan Board*, Okl., 634 P.2d 9 [1975]." *Id.* at p. 842. (Court's emphasis).

¶6 It should be observed that while the cause of action in *Stillwater* was based upon a violation of the Open Meeting Law, the Court's decision was based not upon that Law but rather upon an interpretation of the Oklahoma Administrative Procedures Act as it related to the Savings and Loan Act. The Court in *Stillwater* specifically stated on page 11 that:

"The Savings and Loan Code states that the proceedings of the Board will be conducted under the 'Administrative Procedures Act.'

\* \* \* \* \*

"The 'Administrative Procedures Act,' 75 O.S. 301 et seq. (1971), provides for hearings before agencies under its authority, standards for decisions and appellate processes. 75 O.S. 312 of the Act provides that the parties shall be notified either personally or by mail of any order. 75 O.S. 301(6) of the Act provides:

" 'As used in this Act:

\* \* \* \* \*

" '(6) "order" means all or part of the final or intermediate decision (whether affirmative, negative, injunctive or declaratory in form) by an agency in any matter \* \* \*.'

"The above provision of the 'Administrative Procedures Act,' which specified that the parties shall be notified either personally or by mail of any order, indicates there is no need for the *decision* to be reached in open session. The Administrative Procedures Act provides for open hearing under specified procedures up to the point the decision making is reached. The final decision, being a quasi judicial action, is not required to be reached in an open meeting." (Court's emphasis).

¶7 The pertinent provisions of the Administrative Procedures Act, upon which the Court based its decision in the *Stillwater* case, have remained virtually unchanged. Moreover, it is readily apparent that the Board of Public Accountancy acts in a "quasi judicial" manner when it conducts disciplinary hearings pursuant to Title 59 O.S. 15.1 et seq. (1981) of the Accountancy Code. 59 O.S. 15.20 authorizes the revocation or suspension of certificates following notice and hearing. 59 O.S. 15.23 governing hearings of the Board provides in part that:

"The Board is empowered to conduct hearings under the following notice, procedures and review:

"(a) The Board is empowered to initiate proceedings, under Section 20 of this act, or wherever appropriate for the exercise of authority granted elsewhere under this act, either on its own motion or on the complaint of any person. *Such proceedings shall be conducted in accordance with the provisions of the general laws of this state relating to administrative procedure*; the Board shall have all powers granted to administrative agencies for the conduct of individual proceedings; and judicial review thereof shall be in accordance with the provisions of such general laws relating to administrative procedure." (Emphasis added).

¶8 Based upon the Oklahoma Supreme Court's footnote in the Monson case and a review of the rationale underlying the *Stillwater* decision, we are led to conclude that the holding in *Stillwater* still applies to the Board of Public Accountancy when it conducts disciplinary hearings pursuant to the Administrative Procedures Act. Consequently, the deliberation and final decision of the Board of Public Accountancy, being quasi judicial actions, are not required to be conducted and reached in an open meeting.

## II.

¶9 Your second question is concerned with whether the Board, if permitted to deliberate in closed session, may have its legal counsel present to address legal issues raised in the public hearing.

¶10 The Board of Public Accountancy is authorized to be represented by legal counsel at all hearings conducted by the Board ( 59 O.S. 15.23(b) (1981) ) and to employ legal counsel as such may be needed ( 59 O.S. 15.5 ).

¶11 There appear to be no statutory prohibitions in either the Accountancy Code or the Administrative Procedures Act which preclude the Board from consulting with its legal counsel with respect to legal issues raised during the course of the disciplinary hearing. However, if the legal counsel with whom the Board wishes to consult also prosecuted the case before the Board or acted as an adversary in the matter, such consultation would result in a violation of the registrant's right to due process. (Okla. Const. Article II, Section 7). The constitutional guaranty of due process of law applies to administrative proceedings, especially where such proceedings are quasi judicial in nature. And, in order to comply with due process, an administrative hearing which is quasi judicial in nature must be full, *fair* and adequate. *Wolfenbarger v. Hennessee*, 520 P.2d 809 (Okla. 1974).

¶12 In *Horn v. Township of Hilltown*, 337 A.2d 858 (Pa.1975), the Supreme Court of Pennsylvania held that it was a denial of due process where the same attorney who had, *inter alia*, represented the Zoning Hearing Board, presented the evidence in the matter and thereafter advised the Board in legal matters concerning the case.

¶13 Based on the foregoing, the Oklahoma Board of Public Accountancy, following an individual proceeding of a quasi judicial nature, may consult with its legal counsel in closed meeting with respect to legal issues raised during such proceeding *unless* the legal counsel prosecuted or acted as an adversary in the matter.

¶14 It is, therefore, the official opinion of the Attorney General that:

1. Pursuant to Oklahoma case law, the Open Meeting Law does not include hearings before the Oklahoma State Board of Public Accountancy when it acts in a quasi judicial manner in individual proceedings conducted pursuant to Title 75 O.S. 301 et seq. (1981), of the Administrative Procedures Act and 59 O.S. 15.23 (1981) of the Administrative Accountancy Act. Accordingly, the deliberation and final decision of the Board of Public Accountancy, being quasi judicial actions, are not required to be conducted and reached in open meeting.

2. The Oklahoma State Board of Public Accountancy, following an individual proceeding of a quasi judicial nature, may consult with its legal counsel in closed meeting with respect to legal issues raised during such proceeding unless the legal counsel prosecuted or acted as an adversary in the matter.

To the extent that previous A.G. Opin. No. 79-32 is inconsistent with this opinion, A.G. Opin. No. 79-32 is hereby overruled and withdrawn.

MICHAEL C. TURPEN  
ATTORNEY GENERAL OF OKLAHOMA  
PATRICIA REDD DEMPS  
ASSISTANT ATTORNEY GENERAL

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#### **Cite Name Level**

None Found.

### **Citationizer: Table of Authority**

#### **Cite Name**

#### **Level**

#### **Title 25. Definitions and General Provisions**

Cite	Name	Level
<u>25 O.S. 201,</u>	<u>Repealed</u>	Discussed at Length
<u>25 O.S. 301,</u>	<u>Short Title</u>	Cited
<u>25 O.S. 303,</u>	<u>Times and Places - Advance Notice</u>	Cited
<u>25 O.S. 307,</u>	<u>Executive Sessions</u>	Discussed

#### **Title 59. Professions and Occupations**

Cite	Name	Level
<u>59 O.S. 15.1,</u>	<u>Short Title - Declaration of Policy</u>	Cited
<u>59 O.S. 15.5,</u>	<u>Quorum - Seal - Records - Staff - Expenditures - Rules and Regulations</u>	Cited
<u>59 O.S. 15.20,</u>	<u>Renumbered as 59 O.S. § 15.14B by Laws 1992, HB 2340, c. 272, § 34, eff. September 1, 1992</u>	Cited
<u>59 O.S. 15.23,</u>	<u>Hearings</u>	Discussed at Length

#### **Title 75. Statutes and Reports**

Cite	Name	Level
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75 O.S. 301,

Renumbered as 75 O.S. § 250.3 by Laws 1987, HB 1493, c. 207, § 27

Discussed at Length

75 O.S. 312,

Final Agency Orders - Contents - Notification

Cited