

**Oregon Attorney General Opinions  
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OPINION NO. 78-60

[38 Or. Atty. Gen. Op. 2034]

May 9, 1978

No. 7617

This opinion is issued in response to questions presented by the Honorable D. E. Jones, State Representative.

FIRST QUESTION PRESENTED

In making appointments to a county planning commission under ORS 215.030, does the governing body determine whether the restrictions on membership established by ORS 215.030(5) have been satisfied?

ANSWER GIVEN

Yes, in the first instance.

SECOND QUESTION PRESENTED

What guidelines should the county governing body follow in determining that no more than two planning commission members are engaged in the same kind of occupation, business, trade or profession?

ANSWER GIVEN

The governing body should make appointments that will carry out the legislative intent of providing a planning commission diverse enough in its occupational makeup to adequately represent the various interests among the population at large

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in the county. In comparing occupations, the governing body need not utilize the broadest term possible, such as "agriculture," but instead may

break down that term into its constituent parts such as farmer or cattle rancher.

#### DISCUSSION

County governing bodies may "create and provide for the organization and operations of one or more county planning commissions." ORS 215.020. ORS 215.030(5) establishes certain limitations with respect to the occupations of planning commission members. It states:

". . . No more than two voting members shall be engaged principally in the buying, selling or developing of real estate for profit, as individuals, or be members of any partnership or officers or employes of any corporation that is engaged principally in the buying, selling or developing of real estate for profit. No more than two voting members shall be engaged in the same kind of occupation, business, trade or profession." (Emphasis added).

In 37 Op Atty Gen 987 (1975), we said of this statute:

"Apparently the legislature did not want planning commissions to be controlled or excessively influenced by any one occupation or profession, but rather [intended] to require a diversity of occupations in the make-up of planning commissions. . . ." 37 Op Atty Gen at 987-988.

The first question asks whether the county governing body is the agency to determine whether the restrictions on membership established by ORS 215.030(5) have been satisfied. The answer is yes, in the first instance. ORS 215.030(1) provides that county planning commissions may

consist of five, seven or nine members appointed by the county governing body. It is clear, therefore, that the governing body determines who shall serve on a county planning commission subject to the restrictions as to occupations imposed by ORS 215.030(5). If, however, that determination results in more than two persons of the same occupation or profession serving on a county planning commission, the determination can be

reviewed by the courts through an action at law in the nature of quo warranto. ORS 30.510(1).

In view of our affirmative answer to the first question, the second question asks what "guidelines" the county governing body should follow in determining that no more than two planning commission members are engaged in the same kind of occupation, business, trade or profession.

The facts pertaining to this question arise out of Malheur County, which has a nine member planning commission, five of whom are in "agriculture." The statement is made that

". . . you can be in agriculture and have different occupations, businesses, trades or professions."

The terms "occupation, business, trade or profession" are nearly synonymous. See Board of Supervisors v. Boaz, 176 Va 126, 10 SE2d 498, 499 (1940); State ex rel Lennon v. District Court, 138 Minn 103, 164 NW 366, 368 (1917). The term "occupation" is the broadest of the four terms and in common use includes the other three. But all four terms are

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so flexible in their meaning that they can be as broad or as narrow as the context of their use requires. Thus, only the very broadest of guidelines for the application of this statute can be set forth in this opinion.

The primary guideline is that the county governing body must, in good faith, attempt to carry out the basic legislative intent which is to ensure that a planning commission will have sufficiently diverse membership in terms of occupation so that it can adequately represent the needs of the county's population at large. In applying this guideline, the governing body must necessarily consider the nature of the trade and commerce of the county: is it almost entirely farming or ranching, or is it diversified? If it is necessary to ensure that an almost exclusively agricultural community like Malheur County has the various constituent agricultural occupations adequately represented on the planning commission, the county governing body may take a broad term like "agriculture" and break it down into narrower constituent occupations, like farmer or cattle rancher.(fn1)

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The nature of the statute necessarily reposes in the governing body broad discretion in making appointments. If that discretion is exercised in good faith with the purpose of providing a planning commission diverse enough in its occupational makeup to adequately represent the interests among the population at large in the county, the appointments of the governing body will not be overturned.

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Footnotes:

1 We caution, however, that in breaking down a term like agriculture into its constituent occupations, the county governing body must use classifications that reflect genuine and substantial differences in occupation so as to achieve the legislative purpose of effecting a diversity of interests on planning commissions.