



activity of this type outside public or closed sessions of regularly scheduled meetings violates section 11123 of the Act. In response, the Board notes that FSP fails to cite any specific occurrence of wrongdoing. In addition, the Board denies that its members have engaged in a series of personal communications which taken as a whole would constitute a "meeting" under the Act.

Finally, FSP alleges that certain matters discussed during the closed sessions at the November 30, 1989 and January 25, 1990 meetings were outside the scope of topics which may be a closed session. The Board contends that the topics discussed at both closed sessions were specifically authorized by section 11126. The Board further contends that the complaint regarding the actions at the November 30 meeting is barred by section 11130.3(a), which requires filing of the complaint within thirty (30) days.

FSP requests a declaration that the Board violated the Act. FSP also seeks to enjoin the Board from allowing any person who is not a Board member from attending any scheduled closed session (except the Board's attorney under section 11126(q)); receiving any information in a closed session except for legal advice under section 11126(q); deliberating on any subject during a closed session which is not specifically authorized under the Act; and giving or receiving any information regarding public business from the Board's staff unless at a public meeting or hearing.

The superior court heard oral argument on the Board's demurrer on April 27. The court denied the motion, finding that FSP has stated a valid cause of action and that issues of fact exist. At this writing, the parties are currently in the process of discovery; no hearing on the issues has been scheduled.

RECENT MEETINGS:

At the Board's January meeting, the Publications Committee reported that the Board's proposed consumer information guide had been reviewed by DCA. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 70 for background information.) The Department is concerned that the guide's advocacy of preneed arrangements is too strong. The Board also indicated that the final version of the guide should include a section on constructive delivery, and decided to postpone completion of the consumer guide until the constructive delivery rulemaking (discussed above) is finalized. Once final language is adopted, the guide will be resubmitted for review to the Department.

At the March 22 meeting, the

Board's auditor reported on industry compliance with section 1261 of the CCR. Section 1261 exempts so-called "Totten trusts" from the regulatory and reporting requirements of preneed trusts. A Totten trust is an account opened by the consumer in which the consumer is trustee for the funeral establishment as beneficiary. To be exempt, the consumer must directly deposit the money into the trust account and retain exclusive power over the account. There may be no direct or indirect delivery of money to the funeral director.

The auditor noted that, in many situations, consumers have given to funeral directors checks made payable to a financial institution. The funeral director, in turn, opens the Totten trust account at that institution in the name of the client as trustee for the funeral director as beneficiary. The consumer maintains exclusive control over the trust account. Funeral directors involved in these transactions contend that there is no direct or indirect delivery of funds to the funeral establishment because the checks are made payable to the financial institution.

The auditor requested that the Board clarify the permissible involvement by funeral directors in the establishment of Totten trusts. The Board stated that the regulation prohibits any direct or indirect involvement of the funeral director in establishing Totten trusts. The Board concluded that even though a check may be made payable to the order of the financial institution, the involvement of the funeral director violates the requirement that the consumer directly deposit the money into the financial institution. The Board instructed the auditor to report violations to the Attorney General.

FUTURE MEETINGS:

September 27 in Sacramento.
November 29 in Los Angeles.
January 24 in San Francisco.

BOARD OF REGISTRATION FOR GEOLOGISTS AND GEOPHYSICISTS

*Executive Officer: John E. Wolfe
(916) 445-1920*

The Board of Registration for Geologists and Geophysicists (BRGG) is mandated by the Geology Act, Business and Professions Code section 7800 *et seq.* The Board was created by AB 600 (Ketchum) in 1969; its jurisdiction was extended to include geophysicists in 1972. The Board's regulations

are found in Chapter 29, Title 16 of the California Code of Regulations (CCR).

This eight-member Board licenses geologists and geophysicists and certifies engineering geologists. In addition to successfully passing the Board's written examination, an applicant must have fulfilled specified educational requirements and have the equivalent of seven years of professional experience in his/her field. This requirement may be satisfied with a combination of education from a school with a Board-approved program in geology or geophysical science, and qualifying field experience.

The Board has the power to discipline licensees who act in violation of the Board's licensing statutes. The Board may issue a citation to licensees or unlicensed persons for violations of Board rules. These citations may be accompanied by an administrative fine of up to \$2,500.

The Board is composed of five public members and three professional members. BRGG's staff consists of two full-time employees (Executive Officer John Wolfe and his secretary) and two part-time personnel. The Board's committees include the Professional Practices, Legislative, and Examination Committees. BRGG is funded by the fees it generates.

MAJOR PROJECTS:

Regulatory Changes. Following a public hearing at its January 26 meeting, BRGG adopted several proposed regulatory changes. (See CRLR Vol. 10, No. 1 (Winter 1990) p. 71 for background information on these changes.) New section 3022 specifies criteria for approval of a foreign school's curriculum in geology or geophysics. Amended section 3305 increases the fee for application for registration as a geologist or geophysicist from \$40 to \$60. New sections 3028 and 3029 implement the Permit Reform Act of 1981 by setting forth processing deadlines for licensure applications. At this writing, these regulatory changes still await approval by the Office of Administrative Law (OAL).

BRGG also considered a proposed regulatory change requiring its Executive Officer to be a registered professional and increasing his/her salary scale. The Executive Officer deals extensively with professional-level matters such as evaluating experience of applicants, preliminary and final compilation of exams, and pursuing enforcement actions. A higher salary may be necessary to attract such a professional. However, the Board subsequently abandoned the idea of a regulatory change; it



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believes it can effectuate these changes without a change in its regulations.

Fields of Expertise. For several months, BRGG and the Board of Registration for Professional Engineers and Land Surveyors (PELS) have been attempting to clarify respective fields of expertise between civil engineers who specialize in geotechnical work, and certified engineering geologists. (See CRLR Vol. 9, No.4 (Fall 1989) p. 77 for background information.)

At its January meeting, BRGG reviewed and unanimously adopted a revised Fields of Expertise document, with one change to its preamble. The document has been prepared by a joint PELS/BRGG Civil Engineers/Engineering Geology Committee, whose purpose was to study the "gray" areas where civil engineering and engineering geology overlap and to list activities which are normally done by each and may be performed by both. This is intended to be an internal office document to assist both BRGG and PELS staff in reviewing jurisdictional questions and complaints filed with the boards.

The document does not mention geophysicists, which caused concern that the omission implies geophysicists are unable to perform any of the functions listed. Rather than add a new category for geophysicists to the document, the Board voted to amend the preamble to include the wording, "This document does not apply to the practice of geophysicists."

Some geologists and geophysicists expressed concern that the Fields of Expertise document would be used as a guideline to set standards for state, county, or city agencies, or would be adopted as an official policy statement by either board. The Board responded, however, that this is an internal document with no legal status, and is not intended to be used as a guideline for the above-mentioned purposes.

LEGISLATION:

AB 469 (Harvey) would increase the maximum fee for the filing of an application for registration as a geologist or geophysicist from \$60 to \$100, the renewal fee for a geologist or geophysicist from \$100 to \$200, and the specialty renewal fee from \$20 to \$50. (See CRLR Vol. 9, No. 1 (Winter 1988) p. 48 for background information.) As amended May 29, the bill would require the Board to report to the legislature by June 30, 1992, on fee increase matters, and submit a copy of that report to the Joint Legislative Budget Committee. This bill is pending in the Senate

Appropriations Committee.

AB 3242 (Lancaster), the Department of Consumer Affairs' omnibus bill, would provide that a person who engages in any business for which a license is required may not bring a legal action for compensation for performance of an act for which licensure is required without proving that he/she was licensed during the time of the performance of the act. This bill is pending in the Senate Business and Professions Committee.

LITIGATION:

In *Geophysical Systems Corp. v. Seismograph Service Corp.*, No. CV 85-8359 AWT (C.D. Cal.) (June 11, 1990), a federal court ruled that the Federal Rules of Evidence, not the Geologist and Geophysicist Act, govern the admissibility of expert testimony in federal court. In this diversity breach of warranty action, plaintiff moved to disqualify three of defendant's expert witnesses who are geophysicists, on grounds that the rendering of expert testimony on aspects of geophysics as applied in the petroleum exploration industry constitutes the practice of geophysics, and that none of the witnesses are licensed as geophysicists in California. The court denied the motion on several grounds, including the fact that the rendering of expert testimony is not "practice" as that term is commonly understood for licensure purposes.

FUTURE MEETINGS:

To be announced.

BOARD OF GUIDE DOGS FOR THE BLIND

Executive Officer: Manuel Urena
(916) 445-9040

The Board of Guide Dogs for the Blind has three primary functions. The Board protects the blind guide dog user by licensing instructors and schools to ensure that they possess certain minimum qualifications. The Board also enforces standards of performance and conduct of these licensees as established by law. Finally, the Board polices unlicensed practice.

The Board, authorized by Business and Professions Code section 7200 *et seq.*, consists of seven members, two of whom must be dog users. In carrying out its primary responsibilities, the Board is empowered to adopt and enforce regulations, which are codified in Chapter 22, Title 16 of the California Code of Regulations (CCR).

The Board currently licenses three guide dog schools and 48 trainers.

MAJOR PROJECTS:

Implementation of SB 2229. Pursuant to Business and Professions Code section 7218, enacted in 1988, the Board has completed a lengthy study of the feasibility of developing programs to license providers of signal dogs for the deaf and service dogs for the physically disabled. The Board also evaluated accessibility laws guaranteeing the right of guide, signal, and service dog users to travel unimpeded and enter all places of public accommodation. During its study, the Board conducted a series of public hearings throughout California. (See CRLR Vol. 10, No. 1 (Winter 1990) pp. 71-72; Vol. 9, No. 1 (Winter 1989) p. 48; and Vol. 8, No. 4 (Fall 1988) p. 56 for background information.)

The Board must report its findings to the legislature on or before June 30. At its February 23 meeting, the Board discussed the first draft of its report, which examined the issues and significant subjects which arose during the course of the Board's study.

The draft report recognized several areas requiring legislative attention. The critical need is to develop better methods of ensuring access of assistance (guide, signal, and service) dogs to public places. The Board noted that the general public must also be better informed about the rights of assistance dog users. In addition, the report cited the need for a reliable method enabling the general public to determine which persons with dogs have valid accessibility claims. Finally, the Board determined that the state should license providers of signal and service dogs.

Under current California law (California Civil Code sections 54.1 and 54.2), assistance dog users are legally entitled to access to places of public accommodation. However, the Board acknowledged that the single most difficult problem faced by dog users is refused admission to such places. Many employees in places of public accommodation are unsure of the rights of dog users and whether a particular individual and dog qualify for admittance. The Board cited the need for greater public awareness of the rights of dog users as a means of overcoming the problem of refused access.

The Board proposed several methods to increase public awareness of assistance dogs and the rights of their users. To gain greater access to public places, the Board suggested that a statewide identification system be implemented and administered by the Board. To