



STATE OF WISCONSIN  
DEPARTMENT OF JUSTICE

 **COPY**

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October 23, 2003

The Honorable Tom Reynolds  
State Senator  
306 South, State Capitol  
Madison, WI 53702

The Honorable Rob Kreibich  
State Representative  
107 West, State Capitol  
Madison, WI 53702

Re: Your Inquiries Regarding the Notice of the Board of Regents Meeting on  
October 10, 2003

Dear Senator Reynolds and Representative Kreibich:

Your letters dated October 15, 2003, asked whether or not the notice employed by the Board of Regents for its October 10, 2003, meeting was legally sufficient or whether it violated the open meetings law requirements related to notices for closed sessions set forth in Wis. Stat. § 19.85(1). I referred this matter to the members of the Department of Justice's Public Integrity Unit who handled the initial investigation of the September 2, 2003, telephone meeting and am now prepared to give you the results of that analysis.

The Regents met on October 9 and 10, 2003, pursuant to a regularly scheduled Board meeting. The meeting agenda for October 10, 2003, clearly listed that the Board might convene in closed session under three exemptions provided in Wis. Stat. § 19.85(1). The exception in the notice which was applicable to any discussion of the settlement offer from the Department of Justice concerning the Board's September 2, 2003, telephone meeting would have been pursuant to the exception noted in Wis. Stat. § 19.85(1)(g). This subsection states that a governmental body may convene in closed session for "conferring with legal counsel for the governmental body who is rendering oral or written advice concerning strategy to be adopted by the body with respect to litigation in which it is or is likely to become involved."

On October 10, 2003, the UW System's general counsel, Patricia Brady, who serves as legal advisor at Regents meetings, was present and attended the closed session for the purpose of providing legal advice about the settlement proposal. The session was closed by a vote of the Regents in open session and the Regents reconvened in open session when that portion of the meeting was concluded, pursuant to Wis. Stat. § 19.85(1).

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There is no question that the deliberations involving the proposed settlement were "strategy related to litigation in which . . . the body was likely to become involved." The Regents had been clearly told by my office that if the settlement agreement was not approved, the Department of Justice would file a complaint against the Board and/or individual members on October 13, 2003.

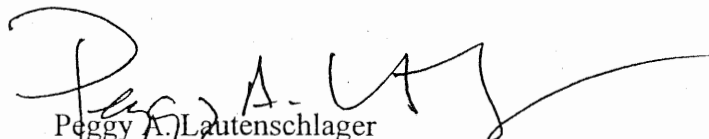
The notice itself listed the statutory exemption of Wis. Stat. § 19.85(1)(g), but did not identify the specific subject nature of the business. This would have been preferable, and we have advised in the past that the notice state the subject matter under consideration. 66 Op. Att'y Gen. 93 at 98 (1977). However, some of the exemptions contain multiple categories and in such cases identifying the nature of the business is more important. See, for example, Wis. Stat. §§ 19.85 (1)(c); or 19.85(1)(f). In this case, the particular exemption itself is clearly related to only one category of business (e.g., legal strategy and advice regarding imminent or current litigation), so that those reading the notice in effect received sufficient notice of the nature of the matter to be discussed.

The office has not opined in the past, nor am I aware of any legal precedent requiring the specific legal claim to be identified in order to meet the law's requirements. There could conceivably be circumstances in which advanced public disclosure of litigation a government body is likely to commence, or publicly noticing information about threatened litigation, could compromise a governmental body's strategic position in that litigation. The purpose behind the exemption for discussing legal strategy with one's lawyer is the recognition that governmental bodies sometimes need to be able to operate within the protections of the attorney-client privilege in order to promote the free flow of information between public official clients and their attorneys.

To summarize, although the notice the Regents employed might have been better were it more specific by quoting the statutory exemption more thoroughly, I believe it met the statutory requirements.

I hope this information answers your questions and appreciate your referring your concerns to this office for review.

Sincerely,

  
Peggy A. Lautenschlager  
Attorney General

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