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October 25, 2005

Marjorie Lundquist, Ph.D.
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Dear Dr. Lundquist:

I have been asked by Attorney General Peggy A. Lautenschlager to respond to your letter of July 21, 2005, in which you inquire about the legal rules applicable to two public hearings that were held in March and April 2005 concerning the use by police officers of the electronic restraint device known as the Taser. The hearings were conducted by the Tactical Skills Advisory Committee ("the Committee") to the Training and Standards Bureau in the Wisconsin Department of Justice for the purpose of aiding the Committee in developing recommendations on Taser use for consideration by the Wisconsin Law Enforcement Standards Board ("the Board") at its June 2005 meeting. Please accept my apology for the delay in getting back to you.

Your letter asks what legal rules, if any, govern the procedures to be followed at such public hearings held by a governmental body. In particular, you ask whether the law requires that all input submitted by members of the public at such a hearing must be provided to the ultimate decision makers in a sufficiently timely fashion for them to have a reasonable opportunity to consider that input before making their decisions and whether the law allows some members of the public to have greater input than others.

As you know, all of the meetings in question were subject to Wisconsin's open meetings law, which requires that each meeting be open and accessible to members of the public and that advance public notice be given of all subjects to be considered at the meeting. To my knowledge, the meetings about which you inquire were all held in compliance with those requirements and your letter does not indicate anything to the contrary.

Your concerns relate not to the notice, openness, or accessibility of the meetings in question, but rather to the adequacy and fairness of the procedures by which members of the public were given an opportunity for substantive *input* into those meetings. The open meetings law requires governmental bodies to give members of the public an opportunity to attend and observe meetings of the body, but its does not require that the public be given an opportunity to speak or otherwise actively participate in such a meeting. The open meetings law leaves it to the discretion of each governmental body to decide whether and to what extent to allow public input at a meeting.

Outside the open meetings law, governmental bodies in Wisconsin are generally free to determine their own rules of procedure, except where those procedures are governed by some specific provision. Most governmental actions are not required to be preceded by a public hearing unless it is specifically mandated by a state or federal law, agency regulation, or local ordinance. For example, Wisconsin state statutes require that municipalities must hold a public hearing before adopting or amending a zoning ordinance, acting on a petition for a conditional use permit or variance, imposing special assessments, or adopting an annual budget. Where such a specific hearing requirement applies, the validity of the governmental action in question may depend on compliance with that requirement. To the extent that the applicable statute does not address particular aspects of the conduct of such a hearing, however, the governmental body in question is, once again, free to determine its own specific hearing procedures.

In addition, even where a public hearing is not legally required, nothing precludes a governmental body from nonetheless choosing to conduct such a hearing, if it believes that public input may assist the body in carrying out its governmental duties. Here, too, state statutes leave the governmental body the freedom to determine its own hearing procedures.

In the situation about which you inquire, neither the Committee nor the Board was legally required to hold any public hearings before making recommendations or taking any actions regarding Taser use by police officers in Wisconsin. In the absence of such a requirement, I am unaware of any provisions in state statutes or administrative regulations that would limit the discretion of the Committee and the Board to establish their own procedures for soliciting, receiving and considering public input.

Beyond these general observations, however, the Attorney General's Office cannot provide you with more specific legal guidance. Except in the areas of open meetings law, public records law and consumer protection, this office is not authorized to provide legal advice or specific legal assistance to anyone other than state officers and agencies, the two branches of the Legislature, the Governor, and county corporation counsel and district attorneys. Therefore, to the extent that you are seeking a comprehensive opinion as to whether there might exist any possible basis—outside the open meetings law—for legal action with respect to the fairness of the public hearing procedures followed by the Committee or the Board, you should consult with a private

attorney. In addition, if such legal action were to occur in the future, this office could be called upon to defend the Committee or the Board. For that reason, too, it is appropriate that you seek the requested legal advice from private counsel.

Sincerely,

Thomas C. Bellavia

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Assistant Attorney General

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