



**STATE OF WISCONSIN
DEPARTMENT OF JUSTICE**

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February 27, 2009

Ms. Charlotte Johnson
Post Office Box 38
Unity, WI 54488

Dear Ms. Johnson:

I am writing in response to your letter of January 4, 2009, in which you raised several concerns related to action taken by the City of Shell Lake Common Council ("the Council") at a special meeting on October 11, 2007. I apologize for my delay in getting back to you and thank you for your patience.

My understanding of the facts of your situation is derived from your letter, my previous communications with you, and the meeting minutes and news articles that you have submitted to me. Based on those sources, it is my understanding that, some time prior to October 2007, your firm, Charlotte Johnson & Co., was hired by the City of Shell Lake to do property tax assessments.

You have submitted to me a copy of the minutes of a meeting of the Council on October 8, 2007. According to those minutes, several property owners at that meeting voiced concerns to the Council about their 2007 revaluations and about your work in making assessments. The Council discussed those concerns and scheduled the matter for further consideration at a special meeting of the Council to take place on October 11, 2007.

You have also submitted a copy of the minutes of the special meeting of the Council on October 11, 2007. According to those minutes, that meeting began in open session with a discussion by the Council of problems relating to the 2007 revaluation, including complaints voiced by some citizens about alleged inequities in the assessment roll and about allegations that you had been unwilling to discuss the methodology used in arriving at their assessments. Following that discussion, a Council member made a motion to go into closed session, pursuant to section 19.85(1)(g) of the Wisconsin Statutes, "to confer with legal counsel on this matter." The motion carried unanimously and the Council then conducted the closed session. The minutes of the special meeting do not include any information about the contents of the closed session.

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At the end of the closed session, the Council reconvened in open session. A member of the Council then made a motion that included, among other things, direction to the city attorney and city administrator to write to you and inform you that your contract with the city was being terminated. That motion carried unanimously. You indicate in your letter that you believe the Council acted unlawfully by removing you from the office of assessor without following the procedures for removal of assessors set forth in section 17.14.

Unfortunately, it is not possible for me to assist you with the issue you raise. Except in the areas of open meetings and public records law, the Wisconsin Department of Justice ("DOJ") is authorized to give legal opinions or advice only to state officers and agencies, the two branches of the Legislature, the Governor, district attorneys, and county corporation counsel and is not authorized to provide legal assistance to private citizens or to municipal assessors. The question of whether the Council followed a proper procedure in terminating your contract is not a question that arises under the open meetings or public records laws. Accordingly, DOJ cannot assist you with that question. I do note, however, that the plain language of section 17.14 provides that the procedure in that statute is not the exclusive method for removing an assessor. *See* sec. 17.14, Wis. Stats. ("in addition to being removable as otherwise provided"). For further assistance with this issue, you may want to consult with a private attorney who would be in a better position to help you in applying any applicable statutory provisions to the specific facts of your situation.

With regard to the open meetings law, your letter suggests that the Council may have violated section 19.85(1)(b), which allows a governmental body to go into closed session for the purpose of investigating charges against a public employee, but requires the governmental body to give the employee actual notice of any closed session that will include an evidentiary hearing or final action. That statute, however, appears not to be applicable to your circumstances for several reasons.

First, at the special meeting on October 11, 2007, the Council did not go into closed session under section 19.85(1)(b), but rather went into closed session under section 19.85(1)(g) in order "to confer with legal counsel" about the matter of citizen complaints concerning your work in making assessments. Because the Council did not go into closed session pursuant to section 19.85(1)(b), the actual notice requirements of that section would not apply.

Nor is there any evidence that the Council acted improperly in going into closed session under section 19.85(1)(g). That section authorizes a body to conduct a closed session for the purpose of conferring with legal counsel about actual or potential litigation. Accordingly, it would not be improper for the Council to go into closed session under that provision in order to consult with its attorney about whether any actions that the Council might take in response to the citizen complaints would have potential implications for future litigation.

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Second, even if the Council had gone into closed session under section 19.85(1)(b), there still is no evidence that the Council violated that section. As already noted, section 19.85(1)(b) requires actual notice to the public employee in question only if the contemplated closed session will include an evidentiary hearing or final action. In your situation, there is no evidence that the Council conducted an evidentiary hearing during the closed session on October 11, 2007, and the Council's final action on the termination of your contract was not taken in closed session, but rather was taken after the Council had reconvened in open session. Under these circumstances, no actual notice would be required under section 19.85(1)(b).

Third, section 19.85(1)(b) applies only when a governmental body is considering dismissal, demotion, licensing, or discipline of a "public employee." According to our previous communications, your firm was providing assessment services to the City of Shell Lake pursuant to a contract. It thus appears that you were not acting as a public employee of the city, but rather were acting as an independent contractor.

For all of the above reasons, it is my opinion that the materials and information that you have submitted provide no evidence of a violation of section 19.85(1)(b).

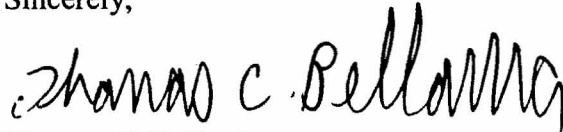
Finally, your letter also indicates that, on December 19, 2008, you filed a public record request with the city administrator for copies of the agendas of the meetings in question, as well as the minutes and agendas of numerous other meetings. You indicate that, at the time of your letter of January 4, 2009, you had received no response to that record request.

Under section 19.35(4), an authority is required to respond to a public record request "as soon as practicable and without delay." How much time that entails in practice may vary from one situation to another. In your situation, it does not appear unreasonable that the city administrator may not have been able to respond to your record request within the 16 days from December 19, 2007, until January 4, 2009—a time period which included two major holidays.

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If, at the present time, you still have not received a response to that record request, I would suggest that you follow up on the matter with the city administrator. If you do not obtain a satisfactory response to your inquiries, you may contact DOJ for further assistance. However, until such time, if any, as you may submit a copy of the agenda of the October 11, 2009, special meeting, it is impossible for me to review whether the Council gave adequate public notice of that meeting.

Sincerely,

A handwritten signature in black ink that reads "Thomas C. Bellavia". The signature is written in a cursive style with a large, prominent initial 'T'.

Thomas C. Bellavia
Assistant Attorney General

TCB:rk

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