

## CORRESPONDENCE/MEMORANDUM

## DEPARTMENT OF JUSTICE

Date: October 18, 2006

To: Members of the Legislative Council's Special Committee on the Applicability of the Open Meetings Law to Quasi-Governmental Bodies

From: Peggy A. Lautenschlager  
Attorney General

Subject: Insights and Suggestions for the Committee's Consideration

I understand from the notices and public documents made available to persons interested in the actions of the above committee that you are holding your first meeting today. Because the issues you will be reviewing relate directly to the enforcement authority of the Wisconsin Department of Justice (DOJ), as well as the prior legal opinions of me and several of my predecessors, I was hopeful that I or a representative of DOJ would be invited to be a part of your process. That appears not to be the case. Nonetheless, as you begin your work, I would, at a minimum, like to share with you some insights on this issue based upon my work as a former legislator, a prosecutor and as Attorney General.

The Attorney General of the State of Wisconsin has long been a significant actor in the interpretation and enforcement of the open meetings and public records law. This role is specifically delineated in Wis. Stats. §19.39. Over the years, my predecessors, I, and the staff of the Department of Justice have been called upon to provide formal written advice as well as informal guidance on the interpretation and the enforcement of the law. The Department of Justice further serves as a vital source of information for local and state officials, attorneys, concerned citizens and the media when questions arise in communities concerning the law's application.

I am troubled by what appears to be a "rush to judgment" that the law needs to be changed. Proposed changes presumably would accommodate the competing public policy needs of citizens who want access to information about how their government and, specifically, how their tax dollars are being spent, and legitimate concerns about the need for some confidentiality when a governmental entity is in the midst of a competitive process. I do not believe you should rush to fix the law if it isn't broken. I ask you to take the following into account:

First, I would urge this Committee, before it embarks on decision to change existing law, to spend some time evaluating why the exceptions in the current open meetings and public records laws for confidentiality do not meet the needs of those who advance rhetoric urging a carte

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blanche exception for quasi-governmental entities. The current exceptions have served the public interest well for over thirty years. We should be in no rush to, in effect, repeal them by carving out such broad exceptions to the law for special interests.

Second, I would urge this Committee to request input from some of the citizens who have experienced the detrimental effects of being frozen out of a decision-making process that should have been public but was instead held in private. I note that mostly persons who represent the interests advocating for broad exceptions to the law are members at your table. I see no representation in your committee membership from citizen groups which complained that entities funded by their tax dollars are allowed to keep records secret and avoid public scrutiny by meeting in private. I urge you to afford such interests a voice in your process.

Third, the initial materials prepared for your review make no mention of a pending Wisconsin court of appeals case which will result in the first published legal precedent construing existing law regarding quasi-governmental corporations. This seems odd, since it is quite obvious that the case, which involves the Beaver Dam Area Development Corporation, was, at least in part, the primary impetus for the creation of this committee. I am providing each of you with a copy of the Department's primary brief in support of this appeal. I am hopeful that it will provide you a more complete and accurate picture of the public policy issues involved and the Department's stated enforcement position. The case is likely to be decided very soon. I would urge this Committee to await the court's decision before encouraging action on proposed legislation. Regardless of which party wins the appeal, I believe a better-defined standard upon which to rely in the future will result from the court's decision.

In recent years there has been an alarming trend in government to "spin off" governmental functions to alleged private entities. The net result is a loss of public accountability, particularly in the area of financial oversight. Requiring such entities to comply with the open meetings and public records laws helps make sure that such "spin off" private entities from governmental bodies are not used to avoid public oversight and accountability. If either I or the members of the Department of Justice staff with a wealth of experience interpreting and enforcing the open meetings and public records laws can assist you in your review, I hope you will not hesitate to contact me.