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DEPARTMENT OF JUSTICE

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Via FAX (608/339-4531) and first class mail

Ms. Cindy W. Haro
Corporation Counsel
Adams County
Post Office Box 450
Friendship, WI 53934

Dear Ms. Haro:

You have asked for my interpretation of the open meetings law in the context of the county board's upcoming interviews for the position of county clerk. The previous county clerk resigned from her position.

Wisconsin Stat. § 17.21(3) provides that vacancies in the elected office of county clerk shall be filled by appointment of the county board for the residue of the unexpired term. You have provided me with materials indicating that the county published a notice seeking applicants for the position, and is now at the point of conducting candidate screening and candidate interviews. You inquire how these can be accomplished in a way that would protect the integrity of the screening process and would respect the requirements of the open meetings law.

Wisconsin Stat. § 19.85(1)(c) allows governmental bodies to convene in closed session for the purpose of "[c]onsidering employment, promotion, compensation or performance evaluation date of any public employee over which the governmental body has jurisdiction or exercises responsibility." In correspondence, this office interpreted the exemption to extend to public officers, such as a police chief, who the governmental body has jurisdiction to employ, and has concluded that the exemption is sufficiently broad to authorize convening in closed session to interview and consider applicants for positions of employment. *See* correspondence, September 20, 1982 (enclosed).

However, this office has also concluded that an elected official is not a "public employee over which the governmental body has jurisdiction or exercises responsibility." Thus, this office has concluded that Wis. Stat. § 19.85(1)(c) does not authorize a county board to convene in closed session to consider appointments of county board members to county board committees, 76 Op. Att'y Gen. 276 (1987). Nor does that section authorize a school board to convene in closed session to select a person to fill a vacancy on the school board. 74 Op. Att'y Gen. 70, 72

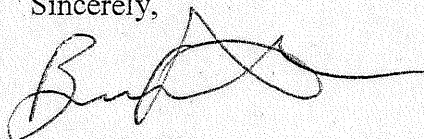
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(1985). Thus, it is my opinion that Wis. Stat. § 19.85(1)(c) does not authorize the county personnel committee to screen candidates in closed session, and does not authorize the county board to interview candidates in closed session. Of course, if some aspect of a particular screening or the interview required the consideration of a candidate's financial, medical, social or personal histories, or disciplinary data, of the type which would likely have a substantial adverse affect on the candidate's reputation if discussed in public, the committee and the board could convene in closed session for that limited portion of the screening, the interview and the post-interview deliberation. Wis. Stat. § 19.85(1)(f). *See also* 74 Op. Att'y Gen. at 71-72.

You further inquire how the screening and interview of candidates can take place in open session while maintaining the integrity of those processes. As I understand the screening process that will be used, the candidates' applications will be measured against benchmarks, for the purpose of eliminating those candidates whose qualifications are not sufficiently strong to justify further consideration. Based on that understanding, it is my opinion that the candidates for the position can be present during the screening process without impairing the integrity of the selection process.

Different considerations arise for the open session interviews of the candidates. As I understand the interview process, the board intends to conduct structured interviews of the candidates. Under that process, the board will prepare a set of questions, and will ask the candidates to separately answer each of the questions. If every candidate were to be present in the room during the interviews of the other candidates, it is possible that some candidates could gain a strategic or competitive advantage in being the first or last to answer each question. To minimize the risk of impairing the integrity of the structured interview process, the board could require all the candidates to remain sequestered outside the board's meeting room until each was brought in separately for his or her interview. Sequestration would maintain the integrity of the process by preventing the candidates from having different amounts of time to formulate their respective answers to the questions, and by preventing the candidates from using information gleaned from others' interviews to tailor their own responses to the questions.

Sincerely,



Bruce A. Olsen
Assistant Attorney General

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Enclosure
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