



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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February 9, 2005

Ms. Linda L. Kunelius
District Administrator
Northland Pines School District
1780 Pleasure Island Road
Eagle River, WI 54521

Dear Ms. Kunelius:

Attorney General Peggy A. Lautenschlager has asked me to respond to your question whether closed session discussions can remain confidential if a member is subpoenaed to testify about the substance of those discussions. Please accept my apologies for the delay in responding to your inquiry.

You state that the school board heard a grievance brought by a suspended teacher, pursuant to the collective bargaining agreement's procedure. The board then convened in closed session to deliberate over the matter and to consult with the board's legal counsel. Subsequently, the teacher filed a complaint with the Wisconsin Employment Relations Commission ("Commission"). The union's legal counsel has issued several subpoenas to school board members to testify at the Commission hearing.

You inquire whether the board members are required to keep confidential the discussions held in closed session, or whether the board members are obligated to disclose the information that was discussed in closed session.

The most appropriate place to direct your question is to either the legal counsel who advised the board at the closed session deliberation, or the legal counsel who is representing the board in the Commission proceedings. One or both of those counsel will have greater knowledge about the substance of the discussions at the closed session. At most, I can suggest some general principles that might be taken into consideration.

As a general matter, persons who are subpoenaed are obligated to testify truthfully about their own personal knowledge concerning matters that are relevant to the proceeding in which they are testifying, unless one of the recognized privileges justifies their refusal to provide such testimony. To the extent that the closed session deliberation did not involve a privilege, such as

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the attorney client privilege, testimony about those deliberations may be compelled by a tribunal such as the Commission. As a general matter, a witness may assert the attorney client privilege only where the answer to a specific question would require the disclosure of information that would intrude on the privilege.

I regret that I am not able to be more specific in responding to your concern. I encourage you to follow up with the school board's counsel if you have additional questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Bruce A. Olsen", with a long horizontal flourish extending to the right.

Bruce A. Olsen
Assistant Attorney General

BAO:cla