

**LETTER OPINION
2006-L-22**

August 16, 2006

Mr. Kent Reiersen
Williston City Attorney
PO Box 1366
Williston, ND 58802-1366

Dear Mr. Reiersen:

Thank you for your July 12, 2006, letter asking whether a city commissioner, who has brought an action against the city, is entitled to attend an executive session dealing with the subject of the litigation brought by that city commissioner. Based on the following analysis, it is my opinion that the city commissioner may be excluded from an executive session in which the other city commissioners will discuss litigation strategy regarding the action brought against the city by the city commissioner.

ANALYSIS

On July 11, 2006, City Commissioner Tom Ritter sued the City of Williston seeking to enjoin the commission from further proceedings concerning a tax increment financing district. As legal counsel for the city, you want to provide legal advice to the commission regarding the litigation strategy for this action in an executive session.¹ Commissioner Ritter wants to attend the executive session.

In 1999, this office recognized an inherent right of a member of a governing body to attend all meetings of that body, including executive sessions.² However, that opinion also stated that the one exception to this right "is when the subject of the executive session is litigation involving the excluded member."³ The 1999 opinion relied upon a 1991 New Jersey Superior Court case, which concluded that a member of a board of education could be

¹ Under N.D.C.C. § 44-04-19.1(2), (5) "attorney consultation" is exempt from the open meetings law.

² N.D.A.G. 99-L-115.

³ Id.

LETTER OPINION 2006-L-22
August 16, 2006
Page 2

excluded from any portion of an executive session of that board when the board was discussing the litigation filed against it by the board member.⁴

I agree with the New Jersey Court's conclusion. It is my opinion that Commissioner Ritter may be excluded from an executive session in which "attorney consultation" occurs regarding the litigation brought against the commission by Commissioner Ritter.

Sincerely,

Wayne Stenehjem
Attorney General

mkk/vkk

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts.⁵

⁴ See Scotch Plains-Fanwood, 598 A.2d 1232 (1991).

⁵ See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).