

Documents: JFC co-chairs were open to confidentiality agreement with DOJ before dismissing as 'nonstarter'

Posted on Wednesday, Aug 28, 2019

While the GOP JFC co-chairs called Dem AG Josh Kaul's request to sign a confidentiality agreement a "nonstarter" after yesterday's hearing, they wrote in a July letter they were open to one to ensure details of proposed settlements submitted for their review remained secret.

They also suggested their own version of a possible nondisclosure agreement after receiving one from Kaul, according to a letter the AG sent committee members yesterday and other correspondence obtained by WisPolitics.com.

But Joint Finance Co-chair John Nygren, R-Marinette, told WisPolitics.com in a statement Republicans on the committee don't believe they should have to sign a nondisclosure agreement because their research since the July exchange shows attorneys general typically haven't asked the gov's office to do so.

"As an equal branch of government, we do not believe we should be required to sign confidentiality agreements," Nygren said.

>> WisPolitics is now on the State Affairs network. Get custom keyword notifications, bill tracking and all WisPolitics content. [Get the app or access via desktop.](#)

The exchange is the latest development in a standoff that Kaul says could harm the state's standing in a multi-state lawsuit that he sought to brief the committee on yesterday. Meanwhile Nygren and fellow JFC Co-chair Alberta Darling, R-River Hills, have accused the AG of seeking to undermine a law passed during the December lame-duck session giving the Legislative oversight of proposed settlements reached by DOJ.

It also all comes against a backdrop of a request from GOP legislative leaders for

the state Supreme Court to weigh in on the extraordinary session law after Kaul has indicated he doesn't believe it impacts certain cases that come before the Department of Justice.

JFC called a hearing yesterday to review a proposed settlement and took the rare — if not unprecedented — step of going to closed session to discuss the details. Kaul wanted committee members to sign the nondisclosure agreements before sharing information on the proposed settlement, but members refused. He also warned there is a Friday deadline for the state to take action on the proposed settlement.

Among other things, Republicans complained the request was rushed with Sen. Luther Olsen, R-Ripon, asking why members hadn't seen the confidentiality agreement well in advance of the hearing.

Kaul then followed up with a letter to all committee members detailing communications with Darling and Nygren going back to March 1 that sought to reach an agreement on how the DOJ and JFC would approach proposed settlements.

The communications include a series of sharp disagreements over the law, as well as proposals to create a working process for JFC to review settlements.

They also included a July 12 letter in which the co-chairs wrote, "We understand your desire to keep proposed settlements confidential. We are open to signing a confidentiality agreement even though we are under no obligation to do so."

That letter included the co-chairs' suggestion for a confidentiality agreement.

The co-chairs said after yesterday's hearing that they told DOJ what is shared in closed sessions of legislative committees is confidential and sufficient to protect the ability to negotiate settlements.

Darling again stressed that in a statement last night, saying "Closed session is confidential, and members of both parties have raised concerns with being required to sign a confidentiality agreement."

Dem members said yesterday they didn't want to sign the agreements because they preferred to simply let Kaul handle the settlement as the agency had operated prior to the December changes Republicans made.

In Kaul's letter yesterday, meeting in closed session wasn't enough of a safeguard

because a Wisconsin court decision indicated material shared in a closed session doesn't have to be kept confidential.

"Considering confidential information and keeping that information confidential is part and parcel of the review of settlements," Kaul wrote. "And if the information discussed in closed session will in fact be kept confidential, signing the agreement will confirm that it must be kept confidential."

Read Kaul's letter:

<https://www.wispolitics.com/wp-content/uploads/2019/08/190827Letter.pdf>