

DOJ says decision no longer needed today on settlement Kaul tried to take before JFC

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DOJ now says a decision is no longer needed by today on a proposed multi-state settlement AG Josh Kaul tried to take before the Joint Finance Committee earlier this week.

DOJ's Charlotte Gibson, head of the Legal Services Division, sent committee members an email yesterday evening breaking the news. It came hours after the JFC co-chairs announced they had retained outside counsel to sign a confidentiality agreement Kaul requested and review the deal in an attempt to break an impasse.

"We don't yet know when or if there will be another time at which a decision may be needed regarding this matter, but it is possible that it will need to be made quickly," Gibson wrote to committee members. "If that situation arises, we will let you know right away."

Earlier in the week, Kaul had warned committee members he needed them to each sign a nondisclosure agreement so he could brief them on a proposed deal and get their sign off before a Friday deadline. He had warned failure to act could harm the state's interest in the unnamed case.

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A DOJ spokeswoman said she couldn't provide any details on why the deadline was now off.

"It seems that when the Finance Committee met AG Kaul's request to sign a confidentiality agreement the urgent deadline resolved itself," said Co-chair John Nygren, R-Marinette.

Nygren and fellow Co-chair Alberta Darling, R-River Hills, announced yesterday they had hired attorney Andrew Phillips to review any proposed settlements reached by DOJ that needed to be approved by the committee under a lame-duck session law Republicans approved in December.

The contract with Phillips, who will be paid \$290 an hour by taxpayers, states he was authorized to sign the confidentiality agreement Kaul requested on behalf of the committee, “thereby binding the JFC, its members and agents.”

But Richard Champagne, head of the Legislative Reference Bureau, wrote in a memo he couldn’t find anything in state law that would bind a lawmaker to confidentiality under such an agreement if the member hadn’t personally signed it.

Dem JFC members said they balked at that provision and weren’t consulted in the hire.

Under the contract, Phillips would review any settlements DOJ reaches, not just the one Kaul tried to bring before the committee this week. In a July letter to the co-chairs, Kaul detailed 17 proposed settlements that he wanted to submit to JFC for its review.

Champagne’s memo also says he can’t find any authority to require a lawmaker to keep confidential any information that was shared in a closed session unless state or federal law required it to remain private or a member had signed a nondisclosure agreement.

That has been part of the dispute between Kaul and the JFC co-chairs.

Kaul had insisted each committee member had to sign a confidentiality agreement before he could share in closed session details of a proposed settlement involving multiple states.

Members refused, and the co-chairs had argued it was unnecessary to sign a confidentiality agreement because lawmakers are bound to keep secret anything said in a closed session.

Champagne, however, noted there is one attorney general opinion he found that no statute imposes a confidentiality requirement on members of a state Senate committee and one would have to be imposed through state law.

“When a committee meets in closed session for the purpose of receiving confidential information, the committee chairperson may certainly poll members to determine if they intend to keep confidential information received in committee,” Champagne wrote. “If members indicate that they will not keep confidential the information, the committee chairperson may need to determine if the committee can receive the confidential information.”

Read the memo:

<https://www.wispolitics.com/wp-content/uploads/2019/08/190829LRB.pdf>