

STATE OF MICHIGAN  
DEPARTMENT OF ATTORNEY GENERAL



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DANA NESSEL  
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December 6, 2019

Louis Lessem  
Vice President and General Counsel  
Wayne State University  
Room 4265 Faculty Administration Building  
656 W. Kirby  
Detroit, MI 48202

Sent by email  
[louis.lessem@wayne.edu](mailto:louis.lessem@wayne.edu)

Dear Mr. Lessem:

The Attorney General's office has reviewed your response to the issues previously submitted to this office by Wayne State University board member Sandra Hughes O'Brien regarding the purported vote by the Board to remove WSU President Wilson. Your response includes 56 pages of exhibits, supporting documents, and written statements of members of the board.

As it relates to the applicability of the Open Meetings Act, you provided a copy of Judge Cynthia Diane Stephens' order issued in the Court of Claims case, *Busuito v Barnhill*, which states: "Plaintiffs cannot demonstrate any likelihood of success on the merits of the OMA claim. The OMA does not apply to meetings of university boards. *Federated Publications, Inc v Mich State Univ Bd of Trustees*, 460 Mich 75, 84; 594 NW2d 491 (1999); *Detroit Free Press Inc v Univ of Mich Regents*, 315 Mich App 294, 298; 889 NW2d 717 (2016)."

As to the underlying factual disputes, your response addresses Ms. O'Brien's suggestion that the executive committee meeting at issue was properly noticed and consisted of a quorum of the board's members. The response contends that an executive committee meeting was not properly convened because the Wayne State University's bylaws require a 2/3 vote to conduct a meeting of the executive committee and no such vote occurred. The response further observes that the required quorum was not present to conduct a public meeting. Finally, prior to convening any meeting concerning President Wilson's term of office, the response notes that certain procedural provisions under the employment agreement must be met, which did not occur as to the alleged executive committee meeting.

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On the whole, it appears that your response concludes that the board could act on these matters if done so properly, noting that the board, "can hold a meeting with proper notice and an agenda so that the Board can properly consider and deliberate on the question and all of its facets, while giving proper consideration to the terms of the Employment Agreement."

In reviewing this matter, this office takes no issue with Judge Stephens' ruling regarding the Open Meetings Act or your position that board action must be engaged in properly; particularly, where it provides for transparency in decision-making, thus promoting the public's right to know. We are persuaded that any future meeting of the board on the matter of President Wilson's term of office should be conducted as a formal session of the board open to the public in keeping with, "the spirit of our Constitution, the tradition of our democracy, and the need for public access to the workings of public institutions and agencies." OAG, 1969-1970, No 4676, pp 73, 75 (August 13, 1969).

Sincerely,



Kelly Keenan  
Deputy Attorney General

cc: Members of the Board of Governors