



# SCOTT McCALLUM

**Governor  
State of Wisconsin**

October 8, 2002

Mr. James E. Doyle  
Attorney General  
Wisconsin Department of Justice  
17 West Washington Avenue  
Madison, WI 53703

Dear Attorney General Doyle:

I am in receipt of your October 7, 2002 letter regarding payment of legal fees in the ongoing caucus investigation. As you very well know, I have consistently expressed my apprehension about taxpayer dollars being expended on legal fees, and I am equally concerned about the expenditure of additional taxpayer costs on a case that has so many differing positions, principally one opinion that belongs to a judge who has already ruled on the matter.

During the past year, I have attempted to address this issue in a civil and professional manner. As your client, I have requested additional information that will assist me in making an informed decision. Regrettably, you have refused to provide me, your client, answers to some very basic questions.

Your request is problematic in light of Judge David Flanagan's ruling yesterday that the Legislature has the constitutional authority to decide whether the payment of legal fees for its employees serves the public interest. The only logical conclusion is that your request to retry this case is another example of your blatant willingness to place politics above the law.

I have chosen to comply with the Wisconsin Constitution as the Chief Executive Officer of the State, and I will not play politics with the laws of Wisconsin simply because it might further my political agenda.

The state of Wisconsin is facing difficult choices in light of a projected budget deficit. I have directed state agencies, including the Department of Justice, to curtail all non-essential state spending. Given that directive, I once again request the following information:

What is the level of resources you will commit to the action you request? As your client, I need to know how much my action will cost taxpayers.

Do you anticipate filing suit against the several law firms that have received state payments to date for representation of legislative employees?

Do you believe the Legislature is authorized to hire legal counsel to defend itself in the action you propose bringing? In earlier correspondence, you have claimed that state employees must first ask the Attorney General to represent them before outside counsel may be assigned to them. Since your office is involved in the investigation, is it really possible for you to represent the very people you would be suing? Of course not, so outside counsel – and additional costs to taxpayers – would be necessary.

Do you anticipate filing suit against state legislators and/or caucus staff individually to force repayment of funds already expended?

Given the fact that a judge has ruled on the merits of this case, do you believe it is practical or prudent to expend more state tax dollars so that a judge may make the same determination?

As you know, on Nov. 13, 2001, I received an opinion from University of Wisconsin-Madison constitutional legal scholar Gordon Baldwin on whether the State should pay for legal representation of legislative employees. Professor Baldwin, one of the most respected constitutional legal scholars in the country, opined that the Legislature has broad plenary powers and that your office's opinion was clearly misguided. He went on to note that he finds "nothing in Wisconsin statutes or its Constitution which forbid a legislative decision to allocate public money for the legal expenses of public employees."

Judge Flanagan echoed that opinion in his summary judgment dismissing the Common Cause lawsuit: "It is clear that the Wisconsin Constitution does not prohibit the Legislature from allocating public funds for the payment or reimbursement of legal fees incurred by legislative officers or employees in the course of a John Doe investigation relating to actions taken in the course of legislative duties."

If you believe, as you state in your October 7, 2002 letter, that there are other arguments to make, I am willing to listen. You undoubtedly understand the rules of professional responsibility, so any refusal to comply with a legitimate request for information from your client raises questions about your motives and undermines your credibility.

I look forward to a civil and professional response to my questions.

Sincerely,



Scott McCallum  
Governor