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February 7, 1986

OPINION NO. 86-36

The Honorable Doug Wood
State Representative
P. O. Box 5606
North Little Rock, Arkansas 72119

Dear Representative Wood:

I am in receipt of your letter of October 21, 1986 in which you seek an official opinion on the following question:

Under the FOI Act, can a dismissed, discharged or fired employee meet with a board, or commission in executive session?

The answer to your question is "no".

Section §12-2805 of the Freedom of Information Act says in part:

(1) Executive sessions will be permitted only for the purpose of considering employment, appointment, promotion, demotion, disciplining or resignation of any public officer or employee.

(a) Only the person holding the top administrative position in the public agency, department or office involved; the immediate supervisor of the employee involved; and the employee may be present at the executive session when so requested by the governing body, board, commission or other public body holding the executive session.

(b) Any person being interviewed for the top administrative position in the public agency, department, or office involved may be present at the executive session when so requested by the governing board, commission or other public body holding the executive session.

Executive sessions must never be called for the purpose of defeating the reason or the spirit of the Freedom of Information Act.

No resolution, ordinance, rule, contract, regulation or motion considered or arrived at in executive session will be legal unless following the executive session, the public body reconvenes in public session and presents and votes on such resolution, ordinance, rule, contract, regulation, or motion.

It is my belief that a "dismissed, discharged or fired employee" cannot meet with a board or commission because he/she is no longer an employee of the agency, but an ex-employee and thus ineligible for executive session inclusion. No mention is made in the Act for former or ex-employees to be included in executive session. In fact, the Arkansas Supreme Court ruled in a case styled, Arkansas State Police Commission v. Davidson, 253 Ark. 1090, 490 S.W.2d 788 (1973) that when a public agency conducts a hearing on the application for the reinstatement of a discharged public employee, that the Freedom of Information Act requires the taking of testimony and the hearing of arguments in public. At the conclusion of the evidentiary hearing, the Board or commission may then go into executive session to discuss the decision they should then reach.

I trust this information will be of service to you and that if I can assist you in the future, you will feel free to call upon me.

Sincerely,


STEVE CLARK
Attorney General

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