

**To: PT Wood; Larry Lorentzen**

**From: Geoff Wilson**

**Re: There was nothing illegal, improper (or worse!) in how the City settled the *Miller* case**

**Date: March 23, 2018**

*Introduction*

The Mayor has asked me to respond to some commentary in today's Mountain Mail about the manner in which the City settled the recent CORA case, *Miller v City of Salida (Miller)*. Of course everyone is entitled to their opinion about how the process might be improved, but any insinuation that anything unlawful or deceitful transpired is simply wrong.

*Here is what happened:*

(A) Council convened an executive session on January 16, for the purpose of receiving advice from their attorney on specific legal questions, which included determining positions relative to matters that may be subject to negotiations, developing a strategy for negotiations and instructing negotiators, as expressly authorized in the Colorado Open Meetings Law (OML; see: C.R.S. 24-6-402(4)(b) and (e)(I). This "negotiations exception" to the well-known prohibition on taking formal action in executive sessions (see: C.R.S.24-6-402(2)(d)(IV) )has existed the Colorado OML for decades. In this exception, the General Assembly has recognized that it generally does not serve the public's interest for the government to publicize its negotiating positions, particularly (as here) in the context of litigation.

(B) At the executive session, the City council discussed with the City's attorneys the City's legal posture in settlement negotiations concerning *Miller*. Council developed a strategy for the negotiations and instructed the City's attorneys to attempt to settle the case at or below a specified amount. The particulars of the discussion at the executive session beyond these general facts are covered by the Council's attorney-client privilege, and are thus not subject to release.

(C) The City's attorneys then engaged Plaintiff's counsel in discussions as to whether it would be possible to settle the case within the parameters established by the Council. The details of these settlement negotiations are not subject to release, either as attorney-client privileged communications or because of Colorado Rules of Evidence, Rule 408 (protecting from release materials in settlement negotiations). The City's attorneys ultimately were able to reach agreement with plaintiff's counsel, settling the case within Council's parameters, for \$20,000.00.

(D) Upon settlement of the case, the City finance department cut a check to plaintiffs, and the Court entered stipulation and dismissal orders. The check was issued according to City protocols and in compliance with all applicable legal requirements. The Mountain Mail seems to suggest that some sort of public vote by Council approving the issuance of the settlement check is legally required. I am unable to locate any Colorado law embodying this notion. Indeed, I am unable to locate anything in the Open Meetings Law or any other Colorado law that Council violated, even in spirit, in settling the *Miller* case.