



OFFICE OF THE BENNETT COUNTY STATE'S ATTORNEY

State's Attorney Sarah E. Harris
P.O. Box 628, Martin, South Dakota 57551
Tel: (605) 685-6986 Fax: (605) 685-2013 e-mail: sarah.harrisbcsa@goldenwest.net

May 9, 2023

Open Meetings Commission
c/o Office of the Attorney General
1302 E. Highway 14, Ste 1
Pierre, SD 57501-8501

RE: Open Meetings Violation Complaint

To whom it may concern:

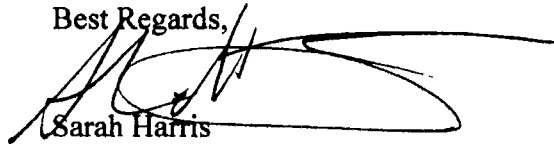
I received two separate complaints both alleging a violation of the open meeting laws for the same Martin City Council Meeting held on Wednesday, February 8, 2023. These complaints have been combined and will be addressed below. After completing my investigation, and pursuant to SDCL 1-25-6 (3) I am referring this matter to the South Dakota Open Meetings Commission for further action.

Attached is a copy of the open meetings complaint, the February 8, 2023 Martin City Council Meeting Agenda, the minutes from the February 8, 2023 City Council meeting (audio can be provided if necessary) and January 4, 2023 minutes from a Bennett County Board of Commissioners meeting. The issue presented in the complaint is that the City of Martin did not have a properly published Agenda posted and available for public view with 24-hour advance notice to the public. The items not referenced on the agenda beneath Law is the Combining of City and County Law Departments and the Cozad Property. The purpose of providing advance notice of the topics to be discussed at the meeting is to provide information to members of the public concerning the City's anticipated business.

Having reviewed all the information, it appears that the agenda that was posted for public view 24 hours in advance of the City Council meeting was missing agenda item combining the City and County law departments and agenda item Cozad Property. At the start of the City Council meeting, City Council member Rascher moved to approve the agenda with flexibility. The agenda that was approved did not include the two additional agenda items: Combining of City and County Law Departments or Cozad Property. The City Council then voted to adopt/approve the final agenda. The City Council then added new items to the agenda after the agenda had been

adopted, as such. It is the determination of this office that this matter is to be referred to the South Dakota Open Meetings Commission for further action.

Best Regards,



Sarah Harris
Bennett County State's Attorney

Enclosure

Cc: file

ROBERT A. FOGG, JR. P. O. BOX 794 MARTIN SD 57551

Bennett County State's Attorney Office

ATT: Ms. Sarah Harris

P. O. Box 628

Martin, SD 57551

re: Open Meeting Complaint

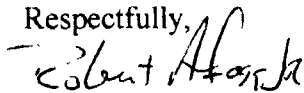
March 12, 2023

Dear Ms. Harris,

Under this cover is my complaint of an Open Meeting Law violation by the Martin City Council and its Mayor. The topic of this complaint concerns the Agenda Item Law, and the failure to publish the item "Combining City and County Law Departments." The date of the alleged infractions is February 8, 2023.

I do not address the issue of the Bennett County Board of County Commissioners' failure to provide notice of their joint meeting with the City Council and Mayor this date under this cover.

Respectfully,

A handwritten signature in black ink that reads "Robert A. Fogg, Jr." with a stylized flourish at the end.

Robert A Fogg., Jr.

March 12, 2023

re: Open Meeting Complaint

My name is Robert Fogg, Jr, and I reside in the City of Martin, County of Bennett, South Dakota. These contents are my complaint as a resident of Martin, and against the Martin City Council and its Mayor (City). The date of the City Council Meeting at issue is February 8, 2023. Enclosed are Bennett County Commission (Commission) Meeting Minutes of January 4, 2023, an Agenda and Minutes of the Martin City Council Meeting of February 8, 2023. I make no reference to any lack of a Commission Agenda under this complaint.

The issue presented by my complaint here is the City did not have a properly published Agenda posted and available for public review with 24 hours advance notice to the public. In other words, the City failed to **“... provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting¹[.]...” The Item not referenced beneath Law on the Agenda is the Combining of City and County Law Departments.

The included Minutes of the Commission Meeting of January 4th are provided to illustrate the most underhanded political operations between the City of Martin and Bennett County currently underway. You will notice highlighted at Law Dept, a Mr. Gary Rayhill as an employee of the Sheriff’s Office. The Sheriff’s Office is a function of County Government. Mr. Rayhill is also the current Mayor of Martin. You will notice highlighted in the City Council Minutes of February 8, 2023, as recognized by Mayor Rayhill, 4 of his Commission Supervisors are present, along with his most recently past commanding Sheriff Mr. Williams, his current commanding Sheriff Mr. Erwin, and his direct line Supervisor Chief Deputy Curtis. At no time did any of these local government officials make mention of this obvious Conflict of Interest.

On page 2 of the Agenda, the item “Law” is highlighted. The historical use of this item for proper context in the City of Martin is to serve two distinct purposes. One purpose is for the Chief of Police to deliver a monthly update of law enforcement activities by the Martin Police Department within the City of Martin (see page 2 of the Minutes as underlined). The more targeted purpose of the Law item is expressly reserved for especially one member of the City Council to demean, debase, and to attempt to demoralize the Chief of Police and the department’s professional officers. This element is not recorded in the minutes.

¹ From the legislature’s website: https://sdlegislature.gov/Statutes/Codified_Laws/2031398
1-25-1.1. Notice of meeting of political subdivision--Agenda--Violation as misdemeanor

Each political subdivision shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the political subdivision's website upon dissemination of the notice, if a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each political subdivision shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor. (Emphasis mine)

With the necessary background now established, kindly direct attention to the same Agenda “Law” item and page 2 of the Minutes at the section titled “Law,” second paragraph. I have placed a highlighted a bracket pair around this section for convenience. Here I draw your attention to the second line of this second paragraph, and specifically the phrase “... combining the city and county law departments[.]” that I have underlined for convenience. The phrase “... combining the city and county law departments[.]” is indeed a very specific phrase, and a topic that stands as an item alone. In other words, a topic as critical to a city’s public safety function as “... combining city and county law departments[.]” properly deserves its own titled Item on any agenda, despite Mr. Rascher’s preoccupation “to demean, debase, and to attempt to demoralize the Chief of Police and the department’s professional officers².”

Here the relevant portion of our Open Meeting Law speaks very clearly:

1-25-1.1. Notice of meeting of political subdivision--Agenda--Violation as misdemeanor.

Each political subdivision **shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting³.

When a legislative body designs a statute with the “shall” language included, there is no mistake of the legislature’s intent. In lay terms, if one wishes to remain out of trouble, then one is well advised to do the task assigned. This portion of 1-21-1.1 informs us of that legal demand in the instant matter, that to be in lawful compliance with our Open Meeting Laws, the City “shall provide public notice” of the City’s interest with “... combining city and county law departments[.]” as an item on the relevant Agenda.

Moreover, an alleged combining of law enforcement operations does necessitate not only budgetary concerns, but also the distribution of municipally owned tangible property, including land, building, motor vehicles, personnel records, ongoing investigations etc. Without entering conversation over potentially tampering with evidence during movement and reassignment of the same, there could well be tens of thousands of dollars if not hundreds of thousands of dollars of inventory, such as motor vehicles, weapons, real estate, and other tangible property at issue.

Here this is no vagueness exception available as a tool or as a weapon for this City to utilize to deny its citizens of their lawful right to know that a proper “... **proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting[.]**” will be lawfully published. (emphasis mine). When an attorney suggests that “... she will meet with the two law boards...” then she, Ms. Frankenstein likely has grave concerns of the lack of legality presented as legal counsel to the City of Martin.

² See above at pg 1.

³ Available at: https://sdlegislature.gov/Statutes/Codified_Laws/2031398 (emphasis mine)

In conclusion, the City of Martin did willfully and intentionally fail in its lawful duty to ensure that it, the City **shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting⁴. (emphasis mine).

Therefore the failure of this City to lawfully publish notice available to the public, on a matter of the greatest public safety concern such as a "... combining of the city and county law departments[]", does require nothing less that the most strenuous sanctions and/or further action that this Open Meeting Commission may take or refer for further action.

This conclusion does not address any failure by the Bennett County Board of County Commissioners that it did not provide its notice for this joint City Commission Meeting on February 8, 2023. That will be addressed under subsequent individual cover.

Respectfully
Robert A. Fogg, Jr
Robert A. Fogg, Jr

Date: 3/20/23

Robert A. Fogg, Jr
Signature

State of South Dakota
County of Bennett

Signed and sworn to (or affirmed) before me this 20 day of March, 2023

Kimberly Harris
Notary Signature

(Notary Seal)

Kimberly Harris
Notary's Printed Name

My Commission Expires: 3-7-24

⁴ See fn 3.

ROBERT A. FOGG, JR. P. O. BOX 794 MARTIN SD 57551

Bennett County State's Attorney Office

ATT: Ms. Sarah Harris

P. O. Box 628

Martin, SD 57551

re: Open Meeting Complaint

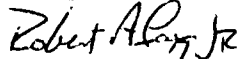
March 12, 2023

Dear Ms. Harris,

Under this cover is my complaint of an Open Meeting Law violation by the Martin City Council and its Mayor. The topic of this complaint concerns the lack of an Agenda Item titled Cozad Property as is locally known in the community here. The date of the alleged infraction is February 8, 2023.

I do not address the issue of the Bennett County Board of County Commissioners' failure to provide notice of their joint meeting with the City Council and Mayor this date under this cover.

Respectfully,



Robert A Fogg., Jr.

March 12, 2023

re: Open Meeting Complaint

My name is Robert Fogg, Jr, and I reside in the City of Martin, County of Bennett, South Dakota. These contents are my complaint as a resident of Martin, and against the Martin City Council and its Mayor (City). The date of the City Council Meeting at issue is February 8, 2023. Enclosed are Bennett County Commission (Commission) Meeting Minutes of January 4, 2023, an Agenda and Minutes of the Martin City Council Meeting of February 8, 2023. I make no reference to any lack of a Commission Agenda under this complaint.

The issue presented by my complaint here is the City did not have a properly published Agenda posted and available for public review with 24 hours advance notice to the public. In other words, the City failed to “... **provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting¹[.]...” The Item not referenced on the Agenda is the Cozad Property.

The included Minutes of the Commission Meeting of January 4th are provided to illustrate the most underhanded political operations between the City of Martin and Bennett County currently underway. You will notice highlighted at Law Dept, a Mr. Gary Rayhill as an employee of the Sheriff’s Office. The Sheriff’s Office is a function of County Government. Mr. Rayhill is also the current Mayor of Martin. You will notice highlighted in the City Council Minutes of February 8, 2023, as recognized by Mayor Rayhill, 4 of his Commission Supervisors are present, along with his most recently past commanding Sheriff Mr. Williams, his current commanding Sheriff Mr. Erwin, and his direct line Supervisor Chief Deputy Curtis. At no time did any of these local government officials make mention of this obvious Conflict of Interest.

At no place on the Agenda does the Item “Cozad Property” appear. As a brief background, Mr. Cozad was a long time attorney here in Martin and Bennett County. He is known to have served as County Judge, State’s Attorney, City Attorney, and School District Attorney. He and his wife both resided here in Martin on a corner lot about the 3rd block up from the state highway. Their wishes upon their passing was that the City and County enjoy their city lots. Sadly neither of the elder Cozads are here with us to today to resolve the inability of a city and county to figure out a simple resolution to an elder couple’s last wishes.

¹ From the legislature’s website: https://sdlegislature.gov/Statutes/Codified_Laws/2031398
1-25-1.1. Notice of meeting of political subdivision--Agenda--Violation as misdemeanor.

Each political subdivision shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the political subdivision’s website upon dissemination of the notice, if a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each political subdivision shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor (Emphasis mine)

Instead here we have a City that cannot post a proper Agenda to include a discussable item such as the Cozad Property. Such public notice in relevant part does require at:

1-25-1.1. Notice of meeting of political subdivision--Agenda--Violation as misdemeanor.

Each political subdivision **shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting².

When a legislative body designs a statute with the “shall” language included, there is no mistake of the legislature’s intent. In lay terms, if one wishes to remain out of trouble, then one is well advised to do the task assigned. This portion of 1-21-1.1 informs us of that legal demand in the instant matter, that to be in lawful compliance with our Open Meeting Laws, the City “shall provide public notice” of the City’s interest with the “...Cozad Property...” as an item on the February 8th Agenda while jointly meeting with the Commission.

Here this is no vagueness exception available as a tool or as a weapon for this City to utilize to deny its citizens of their lawful right to know that a proper “... **proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting**” will be lawfully published. (emphasis mine).

Instead, the City while in joint session with the Commission cast aside its duty to prepare a proper “... **proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting**” will be lawfully published and include an Item title “Cozad Property” as the published record indicates. (emphasis mine).

In conclusion, the City of Martin while meeting in joint session with the Bennett County Board of County Commissioners did fail in its duty as the City of Martin that it “**shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting³.” Nowhere on the Agenda is the Cozad Property discussion or resolution of differences between the City and County noticed.

Here there was no effort by the City, the Mayor, or any member of the City Council to stand and put a stop to this Cozad Property discussion while knowing there was no Agenda Item duly published.

² Available at: https://sdlegislature.gov/Statutes/Codified_Laws/2031398 (emphasis mine)

³ See fn 2.

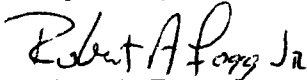
Even if a member of the City Council raised objection to a continuing discussion and the discussion continued, then 3 members of the 6 City Council members present could have risen and stepped out of the meeting room to cease the meeting for want of a quorum.

Therefore it is painfully self-evident that the Martin City Council, while in joint session with the Bennett County Board of County Commissioners did willfully and intentionally violate the notice requirements of our Open Meeting Laws by failing to post an Agenda Item for the "Cozad Property" discussions seeking to resolve the Cozad Property dispute as required under SDCL 1-25-1.1 when the City did fail its duty that the City **shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting.** The proposed agenda shall include the date, time, and location of the meeting⁴.

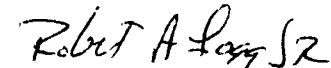
Therefore all matters concerning the Cozad Property at this City Council Meeting need be deemed null and void, and appropriate sanctions be levied.

This conclusion does not address any failure by the Bennett County Board of County Commissioners that it did not provide its notice for this joint City Commission Meeting on February 8, 2023. That will be addressed under subsequent individual cover.

Respectfully,

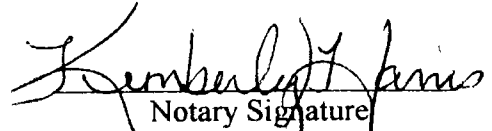

Robert A. Fogg, Jr

Date: 3/20/23


Signature

State of South Dakota
County of Bennett

Signed and sworn to (or affirmed) before me this 20 day of March, 2023


Notary Signature

(Notary Seal)

Kimberly Harris
Notary's Printed Name

My Commission Expires: 3-7-24

⁴ See fn 2.

Summerfest-Doug Johnson

Motion by:

Second by:

Law

Motion by:

Second by:

Pool

Motion by:

Second by:

Liquor

Motion by:

Second by:

executive session SDCL1-25-2.3

First Reading OrdRD 248

Motion by:

Second by:

First Reading Ord 249

Motion by:

Second by:

First Reading Ord 250

Motion by:

Second by:

Golf

Motion by:

Second by:

Markota

Motion by:

Second by:

Personnel Motion by: Second by:

Building permits Motion by: Second by:

Past Due Water Bills Motion by: Second by:

Code Enforcement: Motion by: Second by:

Complaints: Motion by: Second by:

Adjournment: Motion by: Second by:

Next meeting is scheduled for March 8th, 2023 in Community room at 5:30 p.m.

AGENDA SUBJECT TO CHANGE UP TO TWENTY FOUR (24) HOURS PRIOR TO MEETING TIME.

Wednesday February 8th, 2023

The Martin City Council met in Regular Session on Wednesday, February 8th, 2023 at 5:30 p.m. in the Library Community Room at 101 Main Street.

Mayor Gary Rayhill called the meeting to order with council members, Tootie Moffitt, Gloria Claussen, Gregg Claussen, Lindsee Harris, Kevin Rascher and Jay Yohner present. Absent, none.

Others present were Joni Joyce with the Bennett Co Booster, BC Emergency Manager Jeff Sisco, Robert Fogg, Joyce Wilson, BC States Attorney Sara Harris, Police Chief Brandon Petersen, Police Officer Doug Lucero and Daniel Dove, Butch Ceplecha, Bennett County Commissioners Blu Donovan, Bill Livermont, Dave Bakley, and Susan Williams, Paul Williams, BC Sheriff Jason Erwin, BC Deputy Kevin Curtis, Doug Johnson and members of the Ogalla Drifters Motorcycle Club, City Foreman Paul Noel, City Attorney Sara Frankenstein by Zoom, and Finance Officer Jean Kirk.

Approval of Agenda: Rascher moved to approve the agenda with flexibility. Gloria Claussen seconded the motion. All in favor, motion carried.

Minutes: Gregg Claussen moved to approve the January 11th minutes. Yohner seconded the motion, all voting aye, motion carried.

Finance Officer's Report: Rascher moved approve the Finance officer's report for January. Seconded by Harris, all voting aye, motion carried.

| | |
|---------------------------|-------------|
| Beginning Balance on Hand | \$3,582,184 |
| January Receipts | 216,692 |
| Total to be accounted for | 4,889,576 |
| Transfer In | 14,168 |
| Transfer Out | 14,168 |
| Disbursements | 160,777 |
| Outstanding Warrants | 12,982 |
| CD & Petty Cash | 22,702 |

Claims February 2023: The claims were reviewed by the council. Gregg Claussen moved to pay all the February claims. Seconded by Rascher, all voting aye, motion carried.

Insert February Claims Here

Moffitt moved to approve the payment of \$1163 to the USDA for the lagoon payment. Gloria Claussen seconded the motion. All voting aye, motion carried.

Emergency Management: Bennett County Emergency Manager Jeff Sisco informed the Council that there will be Incident command training at the firehall on February 28th. This course is targeted to elected and appointed officials, city/county managers, mayors, county commissioners and city council members.

Summerfest: Doug Johnson representing the Ogalla Drifters motorcycle club informed the Council that they were planning to do the Summerfest again June 24th and asked permission to close Main Street like they did last year. The Council was in consensus that last year's event was great and they could close Main Street again this year.

Law: There were 150 total events for January with 64 calls for service and 10 arrests, 3 of those being felony arrests. He informed the Council that Officer Dove resigned and his last day will February 9th.

Rascher informed the Council that the city law board met with the county law board and Sheriff Irwin about combining the city and county law departments. A lengthy discussion was held about combining. Attorney Frankenstein suggested that she meet with the two law boards at later time.

Cozad Property: A discussion was entered on the Cozad Property with the four County Commissioners that were present. The city wants to tear down the house and office and sell the lots for somebody to who would build a house or move one in. The commissioners don't want to tear the house down as it was appraised for \$30,000.

First Reading of Ordinance #248: The first reading of #248 was held. AN ORDINANCE AMENDING SECTION 6-3-4 TO MARTIN CITY CODE TITLE SIX CHAPTER THREE, MUNICIPAL PARK
Gloria Claussen moved to approve the first reading of Ordinance #248. Gregg Claussen seconded the motion, all voting, motion carried.

First Reading of Ordinance #249: AN ORDINANCE AMENDING SECTION 3-3-11 TO MARTIN CITY CODE TITLE THREE CHAPTER THREE, LITTERING IN PUBLIC PLACES
Gregg Claussen moved to approve the first reading O Ordinance #249. Moffitt seconded the motion, all voting aye, motion carried.

First Reading Ordinance #250: AN ORDINANCE AMENDING SECTION 1-1-6 TO MARTIN CITY CODE TITLE ONE CHAPTER ONE, DEFINITIONS AND GENERAL PROVISIONS
Gregg Claussen moved to approve the first reading of Ordinance #250. Yohner seconded the motion, all voting aye, motion carried.

Golf: Justin Risse with the Bennett County Golf Association asked the Council for \$40,000. He outlined all the reasons why the golf association needed the money. They have payments due on the greens mower and the fairway mower, a new computer to run the sprinkler system, fertilizer, and new sprinkler heads. After discussion the Council asked to see detailed financial records for the association. Mr. Risse said that he will bring them to the next meeting.

Markota: The Council reviewed a quote from Butch Ceplecha for a new heating and cooling system for Markota. The quote was for \$25,982.50. After some discussion Yohner moved to accept the quote from Mr. Ceplecha for the new heating and cooling system for Markota. Gregg Claussen seconded the motion, all voting aye, motion carried.
The quote from Drobny Construction for fixing up the entry way to Markota was tabled till next meeting. The Council would like to get more quotes for the project as they thought quote was high.

Personnel: Moffitt moved to allow Ken Daugherty to access the City's sick bank. Yohner seconded the motion, all voting aye, motion carried.

Code Enforcement: A discussion was held on code enforcement and the rented excavator. Excavator rental is \$6700 a month and the city has paid three months of rent on it and have only torn down one trailer because of all snow storms. A quote from Diesel Machinery Inc was reviewed by the Council. Diesel Machinery Inc would apply what the city paid in rent as a down payment on the excavator if the city decided to buy it. After the rent is applied the Excavator would be \$247,815.

Past Due Water Bills: Rascher moved to handle past due water bills as usual. Gregg Claussen seconded the motion, all voting aye, motion carried.

Adjournment: As there was no further business to come before the council at this time, motion to adjourn was entered by Moffitt.

The next regular city council meeting will be held March 8th 5:30 p.m. at the library community room.

Dated this 8th day of February, 2023

Gary Rayhill, Mayor

ATTEST: _____
Jean Kirk, Finance Officer

Published once at a total estimated cost of \$

**BENNETT COUNTY BOARD OF COMMISSIONERS
MINUTES OF PROCEEDINGS**

**WEDNESDAY, JANUARY 4TH, 2023
MARTIN, SOUTH DAKOTA**

The Bennett County Board of Commissioners met in regular session Wednesday, January 4th, 2023 in the Courtroom.

Commissioners Present: Dave Bakley, Cole Donovan, Bill Livermont, Susan Williams, and Keeley Clausen.

Others Present: Nicole Blakey, Deputy Auditor; Sarah Harris, States Attorney; Jaci Clifford, Register of Deeds; Jolene Donovan, Treasurer; Jeff Siscoe, Emergency Manager; Jason Erwin, Sheriff; Kevin Curtis, Deputy Sheriff; Bo Sharp, Highway Superintendent; Paula Livermont, Highway Secretary; Brandon Peterson, Chief of Police; Johni Joyce, The Booster; Bob Fogg, Bob Ceplecha, Gloria Claussen, Judd Schomp, Chase Strand, Steven Rous, Area Residents.

Deputy Auditor, Nicole Blakey called the meeting to order at 2:30 pm.

The new Commissioners signed their Oaths of Office.

Nicole Blakey, Deputy Auditor, called for election of Chairman. Susan Williams made the motion to elect David Bakley as Chairman. Cole Donovan seconds.

All voted Aye.

Motion Carried.

Susan Williams made the motion to elect Cole Donovan as Vice Chairman. Bill Livermont seconds.

All Voted Aye.

Motion Carried.

Commissioner Boards for 2023 were appointed.

The Boards are as follows:

Chairman: Dave Bakley

Vice Chairman: Cole Donovan

Law: Susan Williams and Cole Donovan.

Courthouse Building: Dave Bakley and Bill Livermont.

4-H Promotion and Expansion Committee and Fair: Dave Bakley and Bill Livermont.

Library: Susan Williams and Keeley Clausen.

Roads: Cole Donovan and Bill Livermont.

City Relations: Cole Donovan and Dave Bakley

Black Hills Council of Local Govts: Susan Williams and Keeley Clausen.

**Auditor's Account with Treasurer
To the Honorable Board of County Commissioners of Bennett County:**

I hereby submit the following report of my examination of the cash and cash items in the hands of the County Treasurer of this County as of December 31st, 2022.

| | |
|--------------------------|-----------------|
| Balance on hand – County | \$ 5,152,315.44 |
| Cash Change Account | \$500.00 |
| Restricted Funds | \$ 273,323.10 |
| Savings Accounts | \$0.00 |

| | |
|----------------------------|------------------------|
| Cash, Checks, Credit Cards | \$147,765.34 |
| Treasurer's Change Fund | - \$281.80 |
| NSF Checks | \$2,373.90 |
| TOTAL | \$ 5,575,995.98 |

Dated this 31st day of December, 2022.

Attest:

_____/S
Chante' Cook, Auditor

Reports

Register of Deeds – December 2022: \$2,003.00

Cole Donovan read the 2023 yearly designations. The Bennett County Booster II shall be the official newspaper for Bennett County.

Security First Bank and South Dakota Public Investment Trust shall be the depositories of Bennett County funds.

The bulletin board located in the east corridor of the Bennett County Courthouse shall be used for official posting of all official notices for the public.

The following locations will be places for chattel mortgage sales:

The Bennett County Courthouse courtroom.

For livestock and machinery, the Bennett County Fairgrounds located in the NE ¼ of NW ¼ of Section 20, Township 36 North Range 37 West of the 6th P.M. Bennett County, South Dakota.

The Treasurer is to invest money for the County and at a regular meeting of the Board in January and July of each year to settle with the Board her accounts as Treasurer.

Polling places shall be:

Vetal/Tuthill Precinct-Vetal Fire Hall

Allen Precinct-Pass Creek District CAP Office

Martin Rural #26/27 Precinct-LaCreek Electric Building

Martin City Precinct-Library Community Room

The hourly wages for election judges and clerks will be \$15.00 per hour plus mileage.

The County per diem will be \$6.00-breakfast; \$14.00-lunch; \$20.00-dinner, with lodging at current State rates if available, and mileage at \$.51 per mile.

The County officials and employees having meetings to attend, as schools, meetings and conventions and any other educational schools called by the department heads and the State Departments, the County will reimburse for mileage at \$.42 per mile; \$6.00-breakfast; \$14.00-lunch; \$20.00-dinner with lodging at current State rates if available.

Indigent burial will be paid at \$1850.00 with cremation the preferred method and paid at \$1200.00.

Approve Vetal and Tuthill Fire Departments for work comp.

Approve the Bennett County Policy Manual.

As per SDCL 6-1-10 a complete list of all salaries of all officers and employees.

2023

| | | |
|------------------------|---------------------|--|
| <u>Commissioners</u> | David Bakley | \$425.00 per month |
| | Cole Blu Donovan | \$425.00 per month |
| | Bill Livermont | \$425.00 per month |
| | Susan Williams | \$425.00 per month |
| | Keeley Clausen | \$425.00 per month |
| <u>DOE</u> | Linay Little Eagle | \$38,480 YR (\$1,480.00) pp |
| <u>Deputy AUD</u> | Nicole Blakey | \$14.00 HOURLY |
| <u>AUD</u> | Chante' Cook | \$50,620.00 YR (\$1,946.92) pp |
| <u>Deputy TREAS</u> | Stella Poor Bear | \$15.50 HOURLY |
| <u>TREAS</u> | Jolene Donovan | \$45,760.00 YR (1,760.00) pp |
| <u>Deputy S.A.</u> | Amanda Risse | \$17.00 HOURLY |
| <u>S.A.</u> | Sarah Harris | \$72,280.00 (2,780.00) pp |
| <u>Custodian</u> | Jesse Clifford | \$496.84 pp \$49,878.40 YR (\$1,918.40) pp DOE: \$9,975.68 EDS: \$39,902.72 |
| <u>EDS/DOE</u> | Jeff Siscoe | |
| <u>Deputy ROD</u> | Anabelle Black Bear | \$12.50 HOURLY |
| <u>ROD</u> | Jaci Clifford | \$41,100.80 YR (\$1,580.80) pp |
| <u>VSO</u> | Donald Larson | (\$465.50) pp |
| <u>Sheriff</u> | Jason Erwin | \$46,800 (\$1,800) pp |
| <u>Coroner/Dep COR</u> | Jason Bustin | \$58.00 per call |
| | James Awuah | \$58.00 per call |
| | Karla Parkes | \$58.00 per call |
| | Hannah Brown | \$58.00 per call |
| | Lynell Jessen | \$58.00 per call |
| | Douglas Lucero | \$58.00 per call |
| <u>Law Dept.</u> | Wakan Moves Camp | \$14.00 HOURLY |
| | Stuart Bucholz | \$16.25 HOURLY |
| | Chrissy Lewis | \$16.50 HOURLY |
| | Lisa Rayhill | \$13.75 HOURLY |
| | Melissa Lobert | \$14.50 HOURLY |
| | Stephen Glass | \$17.50 HOURLY |
| | Slate Evans | \$16.50 HOURLY |
| | Gary Rayhill | \$14.50 HOURLY |
| | Robert Schlack | \$14.50 HOURLY |
| | Kevin Curtis | \$21.00 HOURLY |
| <u>Highway Dept.</u> | Edwin Johnson | \$19.00 HOURLY |
| | Steve York | \$17.00 HOURLY |

| | | |
|---------------|-----------------|-----------------------------|
| Highway Super | Bo Sharp | \$55,000.14 YR (2115.39) pp |
| | Roger Sharp | \$18.00 HOURLY |
| | Bill Goede | \$18.00 HOURLY |
| | Paula Livermont | \$25.00 HOURLY |
| | Gerald Lyon | \$17.00 HOURLY |
| Comm. Action | Mary Thomsen | (\$911.85) pp |
| WIC | Kristine Novak | \$14.50 HOURLY |
| Extension | Mary Kay Sell | \$17.50 HOURLY |

Cole Donovan made the motion to approve the 2023 yearly designations. Susan Williams seconds.

All Voted Aye.
Motion Carried.

Cole Donovan made the motion to approve the 2023 employee wages. Bill Livermont seconds.

All Voted Aye.
Motion Carried.

The Board discussed bills turned in for snow removal. There was a bill from Exceptional Excavation. Bo Sharp called them to help remove snow during the storm. The bill included 37.5 hours of work at \$175 per hour using a blade and backhoe. Another bill was from Dennis Rous. Jeff Siscoe called Dennis to open a driveway. This bill was for 1 hour of work. Keeley Clausen stated that she did not agree with the County paying bills to clear people's driveways. Cole Donovan made the motion to pay the bill from Exceptional Excavation. Susan Williams seconds.

Voting Aye: Dave Bakley, Susan William, Bill Livermont, Cole Donovan.

Vote Abstained: Keeley Clausen.

Motion Carried.

Bob Ceplecha turned in a bill for using a motor grader and loader. It included 94.5 hours at \$175 per hour for snow removal. Cole Donovan made the motion to pay the bill from Bob Ceplecha. Susan Williams seconds.

All Voted Aye.
Motion Carried.

Cole Donovan made the motion to pay the bill from Dennis Rous. Dave Bakley seconds.

All Voted Aye.
Motion Carried.

The Board reviewed a grant application letter for the South Dakota Department of Transportation. The Commissioners requested more information before they were willing to sign the letter and tabled until the next meeting.

Jason Erwin signed his Oath of Office as Sheriff. He questioned the board on what to do with some of the old vests and radios the Sheriffs Department has. The Board informed him those items need to be surplus.

Susan Williams made a motion to renew a housing contract with Charles Mix County to house and feed prisoners for Bennett County at the rate of \$70 each prisoner each day. The contract was signed by Chairman Bakley and Deputy Auditor, Nicole Blakey. Bill Livermont seconds.

All Voted Aye.

Motion Carried.

The U.S. Department of Agriculture sent a survey on 2022 adult rangeland grasshoppers. The Plant Health Safeguarding Specialist sent his contact information for information on programs they have. The Board was interested in looking further into this as there has been a noticeable increase in the grasshopper population.

Bob Fogg mentioned in public comment that an audio system should be set up so that the members of the community attending the Commissioners meetings could hear a bit better. He also requested that information from the meetings should be put on a public website. Sarah Harris stated that it has been discussed in the past, but that there are no current plans to. Bob Fogg declared that the public is left in the dark to which Sarah Harris informed that the minutes are published Bennett County Booster. Cole Donovan stated that the public has access to the recordings of the meetings that are in the Auditors office as well.

Brooke and Jesse Ulmer were called by phone in public comment. They wanted to know when their road was determined not a county road because they wanted the snow cleared. Bo Sharp stated that the first two miles were considered county road while the rest was private drive. Jeff Siscoe state that a culvert in that area had washed out in 2019 and the county did not replace it. There was uncertainty about whether it is a county road or not. Jeff Siscoe had got in contact with someone from the state office who believed Turkey road was a secondary road. They were also unsure and stated they were going to get a hold of someone from the Department of Transportation. Jeff had not heard from anybody after talking to the state office. Cole Donovan and Keeley Clausen wanted to wait and get more information on the road. Bo Sharp and Jeff Siscoe informed them that they have been delivering medicines by snowmobile and they can continue to do that. Bo Sharp declared that the Highway Department still had main roads they were working on and that he had no problems going to clear their road after they had more cleared on main roads. Cole Donovan explained that the Highway Department was doing everything they possible can to get snow removed. He asked citizens to please be patient and that the roads will get opened up.

In old business Jolene Donovan wanted to know if the Commissioners had looked into the resolution on starting wages for the Treasurer, Auditor, and Register of Deeds. Cole Donovan asked Jolene to fill in the new Commissioners on what she was asking. She stated that the Commissioners are to establish the pay of the Treasurer, Auditor, and Register of Deeds and she stated that they should all be treated the same. Susan Williams questioned whether that amount had to be an exact amount or if the resolution was referring to a minimum set wage. They believed that the resolution refers to a minimum wage they can pay the elected officials. Sarah Harris would be looking into it further.

Bo Sharp informed the Board that one of the Highway Department employees had become very sick with a respiratory infection while on the job. The Board stated that he needed to fill out a first report of injury for work comp and that he could pick up a form in the Auditors office.

Bo Sharp was also questioning opening roads near Todd County. Dave Bakley instructed him to get a hold of somebody from the Highway Department at Todd County. Cole Donovan said he would get a hold of Commissioners from Todd County.

Cole Donovan made the motion to go into executive session for personnel per SDCL 1-25-2(1) with Bo Sharp and the Commissioners. Susan Williams seconds.

All Voted Aye.

Wednesday February 8th, 2023

The Martin City Council met in Regular Session on Wednesday, February 8th, 2023 at 5:30 p.m. in the Library Community Room at 101 Main Street.

Mayor Gary Rayhill called the meeting to order with council members, Tootie Moffitt, Gloria Claussen, Gregg Claussen, Lindsee Harris, Kevin Rascher and Jay Yohner present. Absent, none.

Others present were Joni Joyce with the Bennett Co Booster, BC Emergency Manager Jeff Sisco, Robert Fogg, Joyce Wilson, BC States Attorney Sara Harris, Police Chief Brandon Petersen, Police Officer Doug Lucero and Daniel Dove, Butch Ceplecha, Bennett County Commissioners Blu Donovan, Bill Livermont, Dave Bakley, and Susan Williams, Paul Williams, BC Sheriff Jason Erwin, BC Deputy Kevin Curtis, Doug Johnson and members of the Ogalla Drifters Motorcycle Club, City Foreman Paul Noel, City Attorney Sara Frankenstein by Zoom, and Finance Officer Jean Kirk.

Approval of Agenda: Rascher moved to approve the agenda with flexibility. Gloria Claussen seconded the motion. All in favor, motion carried.

Minutes: Gregg Claussen moved to approve the January 11th minutes. Yohner seconded the motion, all voting aye, motion carried.

Finance Officer's Report: Rascher moved approve the Finance officer's report for January. Seconded by Harris, all voting aye, motion carried.

| | |
|---------------------------|-------------|
| Beginning Balance on Hand | \$3,582,184 |
| January Receipts | 216,692 |
| Total to be accounted for | 4,889,576 |
| Transfer In | 14,168 |
| Transfer Out | 14,168 |
| Disbursements | 160,777 |
| Outstanding Warrants | 12,982 |
| CD & Petty Cash | 22,702 |

Claims February 2023: The claims were reviewed by the council. Gregg Claussen moved to pay all the February claims. Seconded by Rascher, all voting aye, motion carried.

Insert February Claims Here

Moffitt moved to approve the payment of \$1163 to the USDA for the lagoon payment. Gloria Claussen seconded the motion. All voting aye, motion carried.

Emergency Management: Bennett County Emergency Manager Jeff Sisco informed the Council that there will be Incident command training at the firehall on February 28th. This course is targeted to elected and appointed officials, city/county managers, mayors, county commissioners and city council members.

Summerfest: Doug Johnson representing the Ogalla Drifters motorcycle club informed the Council that they were planning to do the Summerfest again June 24th and asked permission to close Main Street like they did last year. The Council was in consensus that last year's event was great and they could close Main Street again this year.

Law: There were 150 total events for January with 64 calls for service and 10 arrests, 3 of those being felony arrests. He informed the Council that Officer Dove resigned and his last day will February 9th.

Rascher informed the Council that the city law board met with the county law board and Sheriff Irwin about combining the city and county law departments. A lengthy discussion was held about combining. Attorney Frankenstein suggested that she meet with the two law boards at later time.

Cozad Property: A discussion was entered on the Cozad Property with the four County Commissioners that were present. The city wants to tear down the house and office and sell the lots for somebody to who would build a house or move one in. The commissioners don't want to tear the house down as it was appraised for \$30,000.

First Reading of Ordinance #248: The first reading of #248 was held. AN ORDINANCE AMENDING SECTION 6-3-4 TO MARTIN CITY CODE TITLE SIX CHAPTER THREE, MUNICIPAL PARK
Gloria Claussen moved to approve the first reading of Ordinance #248. Gregg Claussen seconded the motion, all voting, motion carried.

First Reading of Ordinance #249: AN ORDINANCE AMENDING SECTION 3-3-11 TO MARTIN CITY CODE TITLE THREE CHAPTER THREE, LITTERING IN PUBLIC PLACES
Gregg Claussen moved to approve the first reading O Ordinance #249. Moffitt seconded the motion, all voting aye, motion carried.

First Reading Ordinance #250: AN ORDINANCE AMENDING SECTION 1-1-6 TO MARTIN CITY CODE TITLE ONE CHAPTER ONE, DEFINITIONS AND GENERAL PROVISIONS
Gregg Claussen moved to approve the first reading of Ordinance #250. Yohner seconded the motion, all voting aye, motion carried.

Golf: Justin Risse with the Bennett County Golf Association asked the Council for \$40,000. He outlined all the reasons why the golf association needed the money. They have payments due on the greens mower and the fairway mower, a new computer to run the sprinkler system, fertilizer, and new sprinkler heads. After discussion the Council asked to see detailed financial records for the association. Mr. Risse said that he will bring them to the next meeting.

Markota: The Council reviewed a quote from Butch Cepelcha for a new heating and cooling system for Markota. The quote was for \$25,982.50. After some discussion Yohner moved to accept the quote from Mr. Cepelcha for the new heating and cooling system for Markota. Gregg Claussen seconded the motion, all voting aye, motion carried.
The quote from Drobny Construction for fixing up the entry way to Markota was tabled till next meeting. The Council would like to get more quotes for the project as they thought quote was high.

Personnel: Moffitt moved to allow Ken Daugherty to access the City's sick bank. Yohner seconded the motion, all voting aye, motion carried.

Code Enforcement: A discussion was held on code enforcement and the rented excavator. Excavator rental is \$6700 a month and the city has paid three months of rent on it and have only torn down one trailer because of all snow storms. A quote from Diesel Machinery Inc was reviewed by the Council. Diesel Machinery Inc would apply what the city paid in rent as a down payment on the excavator if the city decided to buy it. After the rent is applied the Excavator would be \$247,815.

Past Due Water Bills: Rascher moved to handle past due water bills as usual. Gregg Claussen seconded the motion, all voting aye, motion carried.

Adjournment: As there was no further business to come before the council at this time, motion to adjourn was entered by Moffitt.

The next regular city council meeting will be held March 8th 5:30 p.m. at the library community room.

Dated this 8th day of February, 2023

Gary Rayhill, Mayor

ATTEST: _____
Jean Kirk, Finance Officer

Published once at a total estimated cost of \$



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501
Phone (605) 773-3215
Fax (605) 773-4106
<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

May 1, 2024

Robert A. Fogg, Jr.
PO Box 794
Martin, SD 57551

Re: In the Matter of Open Meeting Complaint 2024-01, Martin City Council –
Bennett County

Dear Mr. Fogg,

This letter is to acknowledge receipt of an open meetings complaint filed by you against the Martin City Council. Bennett County State's Attorney Sarah Harris forwarded the complaint to the Open Meetings Commission for its review. Enclosed is a copy of all the materials I have received. A copy of the complaint materials has also been submitted to the City for their response. I have asked the City to file a response no later than June 30, 2024. I have also requested that the City mail you a copy of any response they file.

The Open Meetings Commission meets periodically and has not scheduled its next meeting. I will notify you of the date, time and location of the next Commission meeting. I apologize for the delay in processing the complaint, due to lack of establishing a quorum of the Open Meetings Commission, we were unable to move forward with the complaint.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "S. Blair".

Steven R. Blair
Assistant Attorney General

SRB/jm

Enclosures

Cc w/o Encl: Mayor Gary Rayhill – Martin City Council
Sarah Harris – Bennett County State's Attorney



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

May 1, 2024

Mayor Gary Rayhill
Martin City Council
101 Main Street
PO Box 687
Martin, SD 57551

Re: In the Matter of Open Meeting Complaint 2024-01, Martin City Council –
Bennett County

Dear Mayor Rayhill,

I assist the South Dakota Open Meetings Commission with their duties. Bennett County State's Attorney Sarah Harris has forwarded to the Commission, pursuant to SDCL 1-25-6(3), a complaint concerning the Martin City Council. The complaint was signed by Robert A. Fogg, Jr. Enclosed is a copy of all the materials I have received.

If the Martin City Council wishes to file a response to the complaint, please send it to the above address on or before June 30, 2024. Please also send copies of any response to Robert A. Fogg, Jr., PO Box 794, Martin, South Dakota 57551 and to State's Attorney Sarah Harris.

After I have received your response, all materials will be sent to the members of the Commission for their review. The Commission meets periodically and has not yet scheduled its next meeting. You will be given further notice of the meeting date, location, and time once the meeting has been scheduled. I apologize for the delay in processing the complaint, due to lack of establishing a quorum of the Open Meetings Commission, we were unable to move forward with the complaint.

May 1, 2024

Re: In the Matter of Open Meeting Complaint 2024-01, Martin City Council – Bennett County

Page 2

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "SRB", with a long horizontal flourish extending to the right.

Steven R. Blair
Assistant Attorney General

SRB/jm

Enclosures

Cc w/o Encl: Robert A. Fogg, Jr.
Sarah Harris – Bennett County State's Attorney



506 Sixth Street
Post Office Box 8045
Rapid City, South Dakota 57709
Main: (605) 342-1078
Fax: (605) 342-9503

www.gpna.com

June 28, 2024

Jacob A. Stewart
Email: jstewart@gpna.com
Direct Dial: (605) 719-3435

Attorney General

JUL - 1 2024

Steven R. Blair
Office of Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Re: In the Matter of Open Meeting Complaint 2024-01,
Martin City Council – Bennett County
GPNA File No. 08083.0003

Dear Mr. Blair:

On behalf of the Martin City Council, please find enclosed the City of Martin's Response Brief to the open meetings complaint received by Robert Fogg, Jr. As you instructed in your letter dated May 1, 2024 to Mayor Rayhill, I am providing a copy of the response to the complaint to Mr. Fogg and State's Attorney Sarah Harris by copy of this letter and enclosures.

Thank you.

Sincerely yours,

A handwritten signature in blue ink that reads "Jacob A. Stewart".

Jacob A. Stewart
Assistant City Attorney

JAS:tf
Enclos.

Cc: Robert Fogg, Jr.
Sarah Harris, Bennett County State's Attorney
Martin City Council

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETING)
COMPLAINT 2024-01, MARTIN CITY)
COUNCIL – BENNETT COUNTY)

CITY OF MARTIN’S RESPONSE BRIEF

The City of Martin, by and through Jacob A. Stewart of Gunderson, Palmer, Nelson & Ashmore, LLP, its assistant city attorney, respectfully submits this response to the open meeting complaint filed by Robert A. Fogg, Jr. dated March 12, 2023.

FACTUAL BACKGROUND

On February 8, 2023, the City of Martin held a City Council Meeting. The City noticed the meeting with a proposed agenda. The agenda was visible, readable, and accessible for a continuous twenty-four hours immediately before the meeting. The agenda was posted at 101 Main Street, Martin, South Dakota, which is the principal office for the City of Martin. The agenda was also posted on the City of Martin’s website.

The agenda for the February 8, 2023, meeting outlined the broad topics that may be addressed within the meeting. Notably, the agenda informed members of the community that conversation and public comment would occur around “Law.” The City of Martin uses “Law” as a broad category to discuss issues with the Martin City Police Department.

Multiple members of the public attended the February 8, 2023 meeting. Four Bennett County Commissioners attended the meeting: Blu Donovan, Bill Livermont,

Dave Bakley, and Susan Williams. Two individuals from the Bennett County Sheriff's Department also attended: Bennett County Sheriff Jason Erwin and Bennett County Deputy Sheriff Kevin Curtis.

During the meeting, a discussion regarding combining services with the Sheriff's Department was raised. The discussion lasted for roughly twenty-eight minutes. Members of the City Council and the public participated in the discussion. The conversation centered on the logistics and potential cost savings of combining the City Police and the County Sheriff into a single policing unit. Council member Kevin Rascher clarified that conversations between the City and County for combined law enforcement was only a thought and more discussions would need to occur before any action could happen. No actions were made during the meeting regarding whether the City would contract with the County to provide law enforcement services.

Immediately thereafter, a member of the audience raised the issue involving the Cozad property. The audience member inquired into the City's plan for the property. This conversation lasted for roughly nine minutes. However, no decisions were made during the meeting. Thereafter, Robert Fogg, Jr., a resident of Martin, filed two open meeting complaints with Bennett County State's Attorney Sarah Harris. The first complaint was that the City of Martin failed to publish the item "Combining City and County Law Departments" on the agenda for the February 8, 2023 meeting. The second complaint was that the City of Martin failed to publish the item "Cozad Property" on the agenda for the February 8, 2023 meeting.

Attorney Sarah Harris ultimately referred the complaints to the Open Meeting Commission pursuant to SDCL § 1-25-6(3).

ARGUMENT

Meetings conducted by any political subdivision of South Dakota are generally open to the public pursuant to SDCL § 1-25-1 as follows:

SDCL § 1-25-1. Official meetings open to public—Exceptions—Public Comment—Violation as misdemeanor.

The official meetings of the state and its political subdivisions are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public.

It is not an official meeting of one public body if its members provide information or attend the official meeting of another public body for which the notice requirements of § 1-25-1.1 or 1-25-1.3 have been met. It is not an official meeting of a public body if its members attend a press conference called by a representative of the public body.

For any event hosted by a nongovernmental entity to which a quorum of the public body is invited and public policy may be discussed, but the public body does not control the agenda, the political subdivision may post a public notice of a quorum, in lieu of an agenda. The notice of a quorum shall meet the posting requirements of § 1-25-1.1 or 1-25-1.3 and shall contain, at a minimum, the date, time, and location of the event. The public body shall reserve at every official meeting a period for public comment, limited at the public body's discretion as to the time allowed for each topic and the total time allowed for public comment, but not so limited as to provide for no public comment.

Public comment is not required at official meetings held solely for the purpose of meeting in executive session, an inauguration, swearing in of newly elected officials, or presentation of an annual report to the governing body, regardless of whether the activity takes place at the time and place usually reserved for an official meeting.

If a quorum of township supervisors, road district trustees, or trustees for a municipality of the third class meet solely for purposes of implementing previously publicly adopted policy; carrying out ministerial functions of that township, district, or municipality; or undertaking a factual investigation of conditions related to public safety; the meeting is not subject to the provisions of this chapter.

A violation of this section is a Class 2 misdemeanor.

The official meetings of the state and its political subdivisions are open to the public unless a specific law is cited by the state or the political subdivision to close the official meeting to the public. *Id.* Common exemptions to the open meeting requirement are found in SDCL § 1-25-2 and do not apply to these complaints.

Before holding a meeting, the city must provide proper notice of the date, time, and location of the meeting pursuant to SDCL § 1-25-1.1 as follows.

SDCL § 1-25-1.1 Notice of meeting of political subdivision-Agenda-Violation as misdemeanor

Each political subdivision shall provide public notice, with proposed agenda, that is visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding any official meeting, by posting a copy of the notice, visible to the public, at the principal office of the political subdivision holding the meeting. The proposed agenda shall include the date, time, and location of the meeting. The notice shall also be posted on the political subdivision's website upon dissemination of the notice, if a website exists. For any special or rescheduled meeting, the information in the notice shall be delivered in person, by mail, by email, or by telephone, to members of the local news media who have requested notice. For any special or rescheduled meeting, each political subdivision shall also comply with the public notice provisions of this section for a regular meeting to the extent that circumstances permit. A violation of this section is a Class 2 misdemeanor.

The statute does not delve into any specificity requirement for items on the agenda. *See id.*

A. Whether the City of Martin properly published an agenda to the public to provide notice of the discussion to contract with the Sheriff's Office for law enforcement duties.

The first open meeting complaint was that the City of Martin failed to publish the item "Combining City and County Law Departments" on the agenda for the February 8, 2023 meeting. Mr. Fogg argues that the information found within the agenda was

insufficient to meet the notice requirements found in SDCL § 1-25-1.1. Mr. Fogg asserts that combining city and county law departments is specific enough to merit its own heading in the agenda.

The statute does not require how specific a city must be when creating its agenda. *See* SDCL § 1-25-1.1. This Commission has recognized the statutory deficiencies regarding the specificity of an agenda in prior decisions: “The language of SDCL § 1-25-1.1 contains no information as to how specific an agenda should be.” *In the Matter of Open Meeting Complaint 08-04 Butte County Commission*, Finding of Fact at ¶ 5. Although this Commission has said an “agenda must contain sufficient information to advise the public as to each of the issues that will be addressed.” *Id.* Previously, this Commission determined an agenda was sufficient if it advised “the public of the time, place, and subject matter of the meeting.” *Id.* The complaint only asserts that the notice failed to properly advise the public of the subject matter.

In the case at bar, the agenda sufficiently advised the public that “Law” issues would be addressed at the meeting. The agenda also accurately informed the public of the date, time, and location of the meeting. Facially, the agenda satisfies SDCL § 1-25-1.1’s notice requirements. Moreover, the Martin City Council took no action regarding the topic in the complaint. Evident from the discussion during the City Council meeting was that more conversations were needed before the City could determine whether it wanted to contract with the County for law enforcement needs.

Therefore, the agenda properly noticed the general public of the subject matter, date, time, and location of the City Council meeting on February 8, 2023, and was in compliance with SDCL § 1-25-1.1.

However, assuming, without admitting, that there is a violation of open meetings laws, the City substantially complied with the spirit of the law. *See Olson v. Cass*, 349 N.W.2d 435, 438 (S.D. 1984) (declining injunctive relief because the open meetings laws were substantially complied with). A critical component of this analysis is that no action was taken when the alleged open meetings violation occurred. *Id.* (informing political subdivisions that the spirit of the law requires adequate opportunity and notice to discuss the issue and public involvement in the decision-making process). There has been no action regarding this topic to date. Moreover, the topic has been addressed at multiple City Council meetings and the public has voiced both their concern and support regarding this issue. Therefore, any potential violation is harmless because the City has maintained the spirit of the law by permitting public involvement during each meeting where this topic has been raised.

B. Whether the City of Martin properly published an agenda to the public regarding the discussion of the Cozad property.

The second complaint (“Complaint”) raises the issue of the Cozad property not being on the agenda. However, the Cozad property was raised by a member of the audience, not a member of the Martin City Council. The topic was not a predetermined item for the City Council to discuss on February 8, 2023. As a general rule, a city council carries discretion regarding public comments and are permitted to discuss and ask questions regarding the public comment. *See* SDCL § 1-25-1. In fact, statute dictates that “The public body shall reserve at every official meeting a period for public comment, limited *at the public body's discretion* as to the time allowed for each topic and the total time allowed for public comment, but not so limited as to provide for no public comment.” SDCL § 1-25-1 (emphasis added).

In a similar situation, this Commission determined a member of the public raising an issue not on the agenda during a public meeting was not a violation of the open meeting laws. *In the Matter of Open Meeting Complaint 06-04 City of Tripp*, a member of the public raised an issue not on the agenda. This Commission stated that a “monthly city meeting is an open meeting and can be attended by anyone. To expect an interested citizen of a community to remain silent because she was not on the agenda is certainly not the intention of an open meeting. The city council heard the concerns and comments of the taxpayer but took no action. Therefore this is not a violation of the law.” *Id.*

Here, the City of Martin did not plan to discuss the issue of the Cozad property during the February 8, 2023 meeting. The City Council also did not raise the issue in the meeting; rather, a member of the public wanted to discuss the Cozad property. The City did not take any action on the issue. The City simply permitted the citizen to be heard. Naturally, conversation ensued based on the citizen’s comments. However, the City took no action regarding the property. Therefore, the City did not violate open meeting laws by failing to place the Cozad property on the proposed agenda before the February 8, 2023 meeting.

C. The OMC does not have jurisdiction to determine whether a conflict of interest existed at the February 8, 2023, Martin City Council Meeting.

The State’s attorney did not refer the issue of whether a conflict of interest existed to the Open Meeting Commission. The Open Meeting Commission only has jurisdiction over those issues referred by the state’s attorney. “If a complaint alleging a violation of this chapter is made pursuant to SDCL § 23A-2-1, the state’s attorney shall take one of the following actions: ... (3) Send the complaint and any investigation file to the South Dakota Open Meetings Commission for further action.” SDCL § 1-25-6(3). If an issue

is not referred to the Commission by the state's attorney, then the Commission lacks jurisdiction to rule on the issue. *Open Meeting Complaint 08-04 Butte County*, Conclusions of Law at ¶ 4. "The Open Meetings Commission cannot exercise jurisdiction on matters not referred to it by a State's Attorney. SDCL § 1-25-6." *Id.*

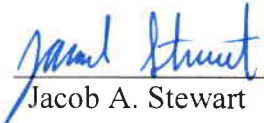
Here, Bennett County State's Attorney Sarah Harris referred only the issues of missing agenda items. "[I]t appears that the agenda that was posted for public view 24 hours in advance of the City Council meeting was missing agenda item combining the City and County law departments and agenda item Cozad Property." *See* Sarah Harris's letter to OMC dated May 9, 2023. No mention was made concerning a conflict of interest. Therefore, this Commission does not have jurisdiction to consider whether a conflict of interest existed in the February 8, 2023, Martin City Council Meeting.

CONCLUSION

The City respectfully requests this Commission find the open meeting complaints made by Robert Fogg, Jr. dated March 12, 2023 are without merit. Specifically, the City requests this Commission determine that the proposed agenda for the February 8, 2023 Martin City Council meeting, met the statutory requirements of providing notice regarding the subject matter, date, time and location of the City Council meeting. Further, the City requests this Commission determine that the topics raised by a member of the public cannot cause a violation of the notice requirements under SDCL § 1-25-1.1.

Dated: June 28, 2024.

GUNDERSON, PALMER, NELSON
& ASHMORE, LLP

By: 

Jacob A. Stewart
Assistant City Attorney for City of Martin
506 Sixth Street
P.O. Box 8045
Rapid City, SD 57709
Phone: (605) 342-1078
Email: jstewart@gpna.com

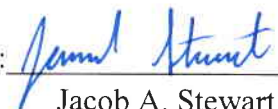
CERTIFICATE OF SERVICE

I hereby certify on June 28, 2024, a true and correct copy of the foregoing was served by depositing the same in the U.S. mail, postage prepaid, upon the following:

Robert A. Fogg, Jr.
PO Box 794
Martin, SD 57551

Steven R. Blair
Office of Attorney General
1302 East Highway 14, Suite 1
Pierre, SD 57501

Sarah E. Harris
Bennett County State's Attorney
PO Box 628
Martin, SD 57551

By: 

Jacob A. Stewart

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

October 18, 2024

Robert Fogg, Jr.
PO Box 794
Martin, SD 57551

Jacob Stewart
Gunderson, Palmer, Nelson, Ashmore, LLP
PO Box 8045
Rapid City, SD 57709

Re: In the Matter of Open Meeting Complaint 2024-01, Martin City Council –
Bennett County

Dear Mr. Fogg & Mr. Stewart,

Enclosed please find a Notice of Hearing regarding the above referenced open meetings complaint. Also enclosed, please find a courtesy copy of the proposed agenda for the Commission's November 18, 2024 meeting. As you can see from the agenda, presentations regarding complaints will begin at 9:00 a.m. central time, or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "SRB".

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

| | | |
|----------------------------|---|-------------------|
| IN THE MATTER OF OPEN |) | OMC 2024-01 |
| MEETINGS COMPLAINT AGAINST |) | |
| MARTIN CITY COUNCIL – |) | NOTICE OF HEARING |
| BENNETT COUNTY |) | |

TO: Robert Fogg, Jr., PO Box 794, Martin, South Dakota 57551; and Martin City Council attorney Jacob Stewart, Gunderson, Palmer, Nelson, Ashmore, LLP, PO Box 8045, Rapid City, South Dakota 57709:

Please take notice that a hearing regarding the above referenced open meetings complaint will be held before the South Dakota Open Meetings Commission, at the Matthews Training Center – Foss Building, 523 E. Capitol Avenue, Pierre, South Dakota, on Monday, November 18, 2024. Oral presentations regarding pending complaints will commence at 9:00 a.m. central time, or as soon thereafter as matters may be heard, and proceed in the order noted in the attached agenda.

Dated this 18th day of October, 2024.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

SOUTH DAKOTA OPEN MEETINGS COMMISSION

AGENDA

Matthews Training Center – Foss Building
523 E. Capitol Avenue
Pierre, South Dakota 57501

November 18, 2024
9:00 a.m. Central Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Commissioner Introductions
4. Election of Officers
5. Discussion of Procedures
6. Consideration of Pending Complaints

A. *In the Matter of Open Meeting Complaint 2021-02 Bennett County Board of Commissioners*

Oral Presentations:

Complainant Jolene Donovan -15 minutes (a portion of this time may be reserved for rebuttal)

Bennett County Board of Commissioners -15 minutes

B. *In the Matter of Open Meeting Complaint 2024-01 Martin City Council*

Oral Presentations:

Complainant Robert Fogg, Jr. -15 minutes (a portion of this time may be reserved for rebuttal)

Martin City Council -15 minutes

C. *In the Matter of Open Meeting Complaint 2024-02 Bennett County Board of County Commissioners*

Oral Presentations:

Complainant Robert Fogg, Jr. -15 minutes (a portion of this time may be reserved for rebuttal)

Bennett County Board of County Commissioners -15 minutes

[LUNCH BREAK 11:45-1:00 P.M CENTRAL TIME]

D. *In the Matter of Open Meeting Complaint 2024-03 Piedmont Board of Trustees*

Oral Presentations:

Complainant Ky Gossard -15 minutes (a portion of this time may be reserved for rebuttal)

Piedmont Board of Trustees -15 minutes

E. *In the Matter of Open Meeting Complaint 2024-04 Lincoln County Commission*

Oral Presentations:

Complainant Wendi Hogan -15 minutes (a portion of this time may be reserved for rebuttal)

Lincoln County Commission -15 minutes

F. *In the Matter of Open Meeting Complaint 2024-05 North Sioux City City Council*

Oral Presentations:

Complainant Walter D Johnson -15 minutes (a portion of this time may be reserved for rebuttal)

North Sioux City City Council -15 minutes

All items are scheduled for 09:00 a.m. Central Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Attorney General's Office, 605-773-3215, at least 48 hours before the meeting if you have a disability for which special arrangements must be made.

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

| | | |
|----------------------------|---|------------------------|
| IN THE MATTER OF OPEN |) | OMC 2024-01 |
| MEETINGS COMPLAINT AGAINST |) | |
| MARTIN CITY COUNCIL – |) | CERTIFICATE OF SERVICE |
| BENNETT COUNTY |) | |

The undersigned hereby certifies that a true and correct copy of the Notice of Hearing and proposed Agenda in the above-captioned matter, were served by United States mail, first class, postage prepaid upon Robert Fogg, Jr., PO Box 794, Martin, South Dakota 57551; and Martin City Council attorney Jacob Stewart, Gunderson, Palmer, Nelson, Ashmore, LLP, PO Box 8045, Rapid City, South Dakota 57709, on this 18th day of October 2024.



Steven R. Blair
Assistant Attorney General
1302 East Highway 14, Suite 1
Pierre, South Dakota 57501
Telephone: (605) 773-3215

STATE OF SOUTH DAKOTA



OFFICE OF ATTORNEY GENERAL

1302 East Highway 14, Suite 1
Pierre, South Dakota 57501-8501

Phone (605) 773-3215

Fax (605) 773-4106

<http://atg.sd.gov>

MARTY J. JACKLEY
ATTORNEY GENERAL

BRENT K. KEMPEMA
CHIEF DEPUTY

November 4, 2024

Robert Fogg, Jr.
PO Box 794
Martin, SD 57551

Jacob Stewart
Gunderson, Palmer, Nelson, Ashmore, LLP
PO Box 8045
Rapid City, SD 57709

Re: In the Matter of Open Meeting Complaint 2024-01, Martin City Council –
Bennett County

Dear Mr. Fogg & Mr. Stewart,

Enclosed please find a courtesy copy of the revised proposed agenda for the Commission's November 18, 2024 meeting. A Microsoft Teams link has been arranged that will allow the parties to appear remotely if they desire. Please let me know, as soon as possible, if you intend to appear remotely or in person. Also, please provide your email address and phone number so that you can be reached if technical difficulties arise. I can be reached at steven.blair@state.sd.us. As previously indicated, presentations regarding complaints will begin at 9:00 a.m. central time or as soon thereafter as matters may be heard.

If you have any questions, please don't hesitate to contact me.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Blair".

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosure

SOUTH DAKOTA OPEN MEETINGS COMMISSION

AGENDA

Matthews Training Center – Foss Building
523 E. Capitol Avenue
Pierre, South Dakota 57501

November 18, 2024
9:00 a.m. Central Time

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Bennett County Board of Commissioners -15 minutes

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Oral Presentations:

Complainant Robert Fogg, Jr. -15 minutes (a portion of this time may be reserved for rebuttal)

Martin City Council -15 minutes

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Complainant Walter D Johnson -15 minutes (a portion of this time may be reserved for rebuttal)

North Sioux City City Council -15 minutes

All items are scheduled for 09:00 a.m. Central Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

If you wish to join this meeting by **Microsoft Teams** please join meeting at:

Meeting ID: 216 768 495 655

Passcode: NM5iqf

Or to join by **telephone** dial:

(605) 679-7263 with Phone conference ID: **757 983 029#**

Notice is given to individuals with disabilities that this meeting is being held in a physically accessible location. Please notify the Attorney General's Office, 605-773-3215, at least 48 hours before the meeting if you have a disability for which special arrangements must be made.