Office of States Attorney

P. O. Box 137
Olivet, South Dakota 57052
Telephone 605-387-5530
Fax 605-387-5550

Attorney General

AUG 1 9 2024

August 16, 2024

Office of the Attorney General 1302 E. Hwy. 14 - Suite 1 Pierre, South Dakota 57501

Attention: Open Meetings Commission

Re: State of South Dakota vs. City of Tripp, South Dakota (Councilman Cody Fischer Complaint)

Dear Attorney General:

Enclosed find the original Complaint signed by Cody Fischer, councilman for the City of Tripp, South Dakota, regarding the council's failure to give proper notice of a special council meeting on August 1, 2024. Also enclosed are the Agenda and Minutes for the special meeting.

Sincerely yours,

Glenn L. Roth

Hutchinson County State's Attorney

GLR:gz

Encl.

cc: Cody Fischer P.O. Box 236

Tripp, South Dakota 57376

(with enclosures)

IN MAGISTRATE COURT STATE OF SOUTH DAKOTA) SS. FIRST JUDICIAL CIRCUIT COUNTY OF HUTCHINSON : COMPLAINT FOR -STATE OF SOUTH DAKOTA, Plaintiff, : COUNT 1: FAILURE TO : GIVE PUBLIC NOTICE OF MEETING VS. : (SDCL 1-25-1.1) (Class 2 Misdemeanor) CITY OF TRIPP, SOUTH DAKOTA, ALIAS: N/A DATE OF BIRTH: N/A LAST KNOWN ADDRESS: P.O. Box 428, : Tripp, South Dakota 57376, Defendant.

The undersigned being duly sworn upon oath charges:

COUNT 1:

That on or about the 1st day of August, 2024, in the County of Hutchinson, State of South Dakota, the City Council of the City of Tripp, South Dakota, did commit the public offense of FAILURE TO GIVE PROPER PUBLIC NOTICE OF MEETING (SDCL 1-25-1.1) (Class 2 Misdemeanor) in that the Tripp City Council, consisting of a majority of its members, held a special meeting without the public notice required pursuant to SDCL 1-25-1.1, and took action, which resulted in the loss of employment by a City of Tripp employee;

contrary to statute in such case made and provided against the peace and dignity of the State of South Dakota.

The complainant states that this Complaint is based upon his written Statement and the text message notification of special council meeting sent to him on August 1, 2024, which are attached hereto and made a part hereof by reference thereto.

Dated this $\underline{\hspace{1cm}}$ day of August, 2024, at Olivet, South Dakota.

CODY FISCHER, TRIPP CITY COUNCILMAN - COMPLAINANT

STATE OF SOUTH DAKOTA)
) SS.
COUNTY OF HUTCHINSON)

Subscribed and sworn, and under penalties of perjury, I declare that I have examined this Complaint, and to the best of my knowledge and belief, the contents in this Complaint are true and correct.

CODY FISCHER

Subscribed and sworn to before me this _____ day of August, 2024.

My commission expires: 11-08-2025.

GLENDA ZEEB NOTARY PUBLIC - SOUTH DAKOTA Subject: SDCL 1-25-1.1 Notice of meeting of political subdivision – Agenda – Violation as misdemeanor

At approximately 09:29 on Thursday August 1st, 2024, I was notified of a special meeting that was to take place at the Tripp, South Dakota City Hall at 1900 hours. According to South Dakota Codified Law stated above, there is to be a continuous 24-hour time period prior to the meeting time. This instance violated that time frame. Due to my position as a councilman, I feel it is my duty to report this instance.

Cody Fischer
Tripp City Councilman

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.

Source: SL 1987, ch 22, § 2; § <u>1-25-1.2</u>; SL 1990, ch 19; SL 1990, ch 30, § 2; SL 2012, ch 6, § 1; SL 2013, ch 9, § 1; SL 2015, ch 11, § 1; SL 2016, ch 10, § 1; SL 2019, ch 3, § 5.

6 People >



shoot fireworks... so I'm just passing it on

Glen Batterman



Ok

Jeff Kramer



Thursday 09:29

Kayla Wilson



Special meeting tonight at 7pm

Randy Squier



OK, I should be able to make it

I won't make it. I'm leaving for Rapid soon

Jeff Friman

I will be unavailable. Umping



Tripp City Special Council Meeting

August 1st ,2024, 7:00PM

Call to order

Executive session (personal matter)
 Adjourn

AGENDA IS SUBJECT TO CHANGE UP TO TWENTY-FOUR (24) HOURS BEFORE MEETING

*Public comment is 3 minutes or less and no action can be taken.

The city council met in Special session for in the council chambers at 7:00pm.

The meeting was called to order at 7:01pm by Mayor Scott Schelske.

Present: Glen Batterman, Drake Johnston, Jeff Kramer, Randy Squier

Absent: Jeff Friman, Cody Fischer

Also in attendance: Darren Donnelson

Motion by Glen Batterman and seconded by Drake Johnston to enter executive session for personal matter at 7:01pm. Motion Carried.

Mayor Scott Schelske recessed us out executive session at 7:24pm.

Motion by Glen Batterman and seconded by Randy Squier to accept Darren Donnelson's resignation as police chief as of August 1st. Motion carried.

Motion by Drake Johnston and seconded by Jeff Kramer to go back into executive session at 7:36pm. Motion Carried.

Scott Schelske declared the council out of executive session at 7:54pm.

The council had discussions about city worker applications.

Moved by Randy Squier and seconded by Drake Johnston to adjourn at 8:05pm. Motion Carried.

 From:
 rothlaw@gwtc.net

 To:
 Blair, Steven

 Cc:
 McFarlane, Jenna

Subject: RE: [EXT] Fischer Open Meetings Complaint Concerning Tripp City Council

Date: Thursday, August 22, 2024 2:53:18 PM

Mr. Blair,

Yes, I believe there is merit to the complaint and would like it referred to the Commission for further action.

Glenn L. Roth
Hutchinson County State's Attorney
P.O. Box 137
Olivet, South Dakota 57052
Telephone - 605-387-5530
Fax - 605-387-5550
rothlaw@gwtc.net

From: Blair, Steven < Steven. Blair@state.sd.us>

Sent: Tuesday, August 20, 2024 8:41 AM

To: rothlaw@gwtc.net

Cc: McFarlane, Jenna < Jenna. McFarlane@state.sd.us>

Subject: Fischer Open Meetings Complaint Concerning Tripp City Council

State's Attorney Roth,

Good Morning! We are in receipt of the attached open meetings complaint that was forwarded to the Attorney General's Office. Please indicate whether you these materials were sent to the Open Meetings Commission because you believe there is merit to the complaint and are referring the matter to the Commission for further action – as per SDCL 1-25-6(3). Or, whether you have found no merit to the complaint and you forwarded these materials for "statistical purposes" under SDCL 1-25-6(2).

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

Thanks!

Steven R. BlairDeputy Attorney General

Office of the Attorney General Rapid City Office

P.O. Box 70

Rapid City, South Dakota 57709

Telephone: (605) 394-6038 Email: steven.blair@state.sd.us



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

BRENT K. KEMPEMA CHIEF DEPUTY

August 23, 2024

MARTY J. JACKLEY

ATTORNEY GENERAL

Cody Fischer PO Box 236 Tripp, SD 57376

Re: In the Matter of Open Meeting Complaint 2024-12, Tripp City Council – Hutchinson County

Dear Mr. Fischer,

This letter is to acknowledge receipt of an open meetings complaint filed by you against the Tripp City Council. Hutchinson County State's Attorney Glenn Roth 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 Council for their response. I have asked the City Council to file a response no later than September 23, 2024. I have also requested that the City Council 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.

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

Sincerely,

Steven R. Blair

Assistant Attorney General

SRB/jm

Enclosures

Cc w/o Encl: James Marsh, City Attorney for Tripp City Council

Glenn Roth – Hutchinson County State's Attorney Office



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

BRENT K. KEMPEMA CHIEF DEPUTY

August 23, 2024

MARTY J. JACKLEY

ATTORNEY GENERAL

James Marsh JE Marsh Consulting PO Box 188 Tripp, SD 57376

Re: In the Matter of Open Meeting Complaint 2024-12, Tripp City Council – Hutchinson County

Dear Mr. Marsh,

I assist the South Dakota Open Meetings Commission with their duties. Hutchinson County State's Attorney Glenn Roth has forwarded to the Commission, pursuant to SDCL 1-25-6(3), a complaint concerning your client Tripp City Council. The complaint was signed by Cody Fischer. Enclosed is a copy of all the materials I have received.

If the City Council wishes to file a response to the complaint, please send it to the above address on or before September 23, 2024. Please also send copies of any response to Cody Fischer, PO Box 236, Tripp, South Dakota 57376 and to Hutchinson County State's Attorney Glenn Roth.

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.

August 23, 2024

Re. In the Matter of Open Meeting Complaint 2024-12, Tripp City Council – Hutchinson County

Page 2

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

Sincerely,

Steven R. Blair

Assistant Attorney General

SRB/jm

Enclosures

Cc w/o Encl: Cody Fischer

Glenn Roth - Hutchinson County State's Attorney Office

FINK LAW OFFICE, P.C.

P.O. BOX 444, 225 N. MAIN AVENUE

BRIDGEWATER, SOUTH DAKOTA 57319-0444
TELEPHONE (605) 729-2552
FACSIMILE (605) 729-2445

September 10, 2024

Mr. Steven R. Blair Assistant Attorney General Office of Attorney General 1302 E. Highway 14, Suite 1 Pierre, SD 57501-8501

RE: In the Matter of Open Meeting Complaint 2024-12, Tripp City Council- Hutchinson County

Dear Mr. Blair:

MIKE C. FINK

I am the City Attorney for the City of Tripp, South Dakota. I am in receipt of your letter addressed to James Marsh, former City Attorney for Tripp, South Dakota. I have interviewed the Tripp Mayor, Scott Schelske and obtained the agenda, minutes, and notices which were sent in relation to the August 1, 2024, 7:00 p.m. Special Meeting of the Tripp City Council. Those documents are attached herewith.

Based upon my communication with Mayor Schelske, it appears he was under the impression that the 24 hour rule did not apply to Special Meetings. He understands now that this is incorrect, and apologizes for the mistake. As is reflected in the agenda, the Special Meeting was called to address matters in executive session. Specifically, the discussion related to employment and "personnel" matters (City Police Officer). On the morning of the Special Meeting, the Finance Officer sent notification of the meeting to each of the council members and received feedback from all (including the complainant) as to whether they would be able to attend the meeting. As I understand the situation, no council member questioned (at that time) whether the meeting could proceed on such short notice. As such, I suspect all were under the same mistaken impression regarding the 24 hour rule (or just didn't give it a thought). At that meeting, an executive session was held, after which the City Police Officer resigned his position. It appears the only public action taken by the board, was to accept this resignation. I have instructed the City to list this item on the next city counsel meeting agenda, so that the motion can be made at a properly noticed meeting.

It appears that 2 weeks later, one of the coucil members (who had received an electronic notice of the special meeting) filed a "complaint" with Hutchinson County States Attorney Glen Roth. As

Mr. Steven R. Blair September 10, 2024 Page 2

an initial matter, it is my view that the council did violate SDCL Chapter 1-25, when it held a Special Meeting, without posting the agenda at least 24 hours in advance. Certainly a self-reporting of such a violation was warranted when the mistake was discovered. That said, it also bears notice that the complainant did not bring the matter to the attention of the Mayor, prior to taking the complaint to the States Attorney. This is unfortunate. The complaining counsel member, in fact, supported the continuing employment of the police officer who resigned from his job on the night of the Special Meeting. This is telling, as it appears the council member chose to file the complaint with the States Attorney, rather than having a discussion with the rest of the board and myself in advance of a self-report.

Again, it would appear the council did violation the open meeting rules, and a sanction is expected. At the same time, however, I feel it is important that your office have a full picture of the events and interests at stake with this complaint. I have had a discussion with the Mayor and the Finance Officer; I believe both understand that the 24 hour rule applies to <u>all</u> meetings, and I do not anticipate further problems. Please contact me directly if you have any questions, or if you would like further information.

Best regards.

Very truly yours,

FINK LAW OFFICE, P.C.

Mile C. Fink

Enclosures

c: Mayor Scott Schelske
Municipal Finance Officer
Mr. Cody Fischer
Mr. Glen Roth

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

BRENT K. KEMPEMA CHIEF DEPUTY

October 21, 2024

MARTY J. JACKLEY

ATTORNEY GENERAL

Cody Fischer PO Box 236 Tripp, SD 57376 Mike C Fink Fink Law Office, P.C. PO Box 444 Bridgewater, SD 57319-0444

Re: In the Matter of Open Meeting Complaint 2024-12, Tripp City Council – Hutchinson County

Dear Mr. Fischer & Mr. Fink.

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 25, 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,

Steven R. Blair

Assistant Attorney General

SRB/jm Enclosure

STATE OF SOUTH DAKOTA

OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN MEETINGS COMPLAINT AGAINST)	OMC 2024-12
TRIPP CITY COUNCIL – HUTCHINSON COUNTY)	NOTICE OF HEARING
HUTCHINSON COUNTY)	

TO: Cody Fischer, PO Box 236, Tripp, South Dakota, 57376; and Mike C Fink, Fink Law Office, P.C., Po Box 444, Bridgewater, South Dakota 57319-0444:

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 25, 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 21st 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 25, 2024 9:00 a.m. Central Time

- 1. Approval of the Agenda
- 2. Public Comment period as per SDCL 1-25-1
- 3. Consideration of Pending Complaints
 - A. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township

Oral Presentations:

Complainants Terry and Todd Koerner -15 minutes (a portion of this time may be reserved for rebuttal)

Carlyle Township -15 minutes

B. <u>In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners</u>

Oral Presentations:

Complainants Deb Hadcock and Travis Lasseter -15 minutes (a portion of this time may be reserved for rebuttal)

Pennington County Board of Comissioners -15 minutes

C. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council

Oral Presentations:

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

Sturgis City Council -15 minutes

D. <u>In the Matter of Open Meeting Complaint 2024-09 City Of Lead Commission</u>

Oral Presentations:

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

City of Lead Commission -15 minutes

[LUNCH BREAK 12:00-1:00 P.M CENTRAL TIME]

E. <u>In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District</u>

Oral Presentations:

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

Green Valley Sanitary District -15 minutes

F. <u>In the Matter of Open Meeting Complaint 2024-11 Charles Mix County</u> Commission

Oral Presentations:

Complainants Jeff and Jolene Stewart -15 minutes (a portion of this time may be reserved for rebuttal)

Charles Mix County Commission -15 minutes

G. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council

Oral Presentations:

Complainants Cody Fischer -15 minutes (a portion of this time may be reserved for rebuttal)

Tripp City Council -15 minutes

8. Discussion regarding future meeting.

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



OFFICE OF ATTORNEY GENERAL

MARTY J. JACKLEY 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

BRENT K. KEMPEMA CHIEF DEPUTY

November 4, 2024

Cody Fischer PO Box 236 Tripp, SD 57376 Mike C Fink Fink Law Office, P.C. PO Box 444 Bridgewater, SD 57319-0444

Re: In the Matter of Open Meeting Complaint 2024-12, Tripp City Council –

Hutchinson County

Dear Mr. Fischer & Mr. Fink,

Enclosed please find a courtesy copy of the revised proposed agenda for the Commission's November 25, 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,

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 25, 2024 9:00 a.m. Central Time

- 1. Approval of the Agenda
- 2. Public Comment period as per SDCL 1-25-1
- 3. Consideration of Pending Complaints
 - A. In the Matter of Open Meeting Complaint 2024-06 Carlyle Township

Oral Presentations:

Complainants Terry and Todd Koerner -15 minutes (a portion of this time may be reserved for rebuttal)

Carlyle Township -15 minutes

B. <u>In the Matter of Open Meeting Complaint 2024-07 Pennington County Board of Commissioners</u>

Oral Presentations:

Complainants Deb Hadcock and Travis Lasseter -15 minutes (a portion of this time may be reserved for rebuttal)

Pennington County Board of Comissioners -15 minutes

C. In the Matter of Open Meeting Complaint 2024-08 Sturgis City Council

Oral Presentations:

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

Sturgis City Council -15 minutes

D. <u>In the Matter of Open Meeting Complaint 2024-09 City Of Lead Commission</u>

Oral Presentations:

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

City of Lead Commission -15 minutes

[LUNCH BREAK 12:00-1:00 P.M CENTRAL TIME]

E. <u>In the Matter of Open Meeting Complaint 2024-10 Green Valley Sanitary District</u>

Oral Presentations:

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

Green Valley Sanitary District -15 minutes

F. <u>In the Matter of Open Meeting Complaint 2024-11 Charles Mix County Commission</u>

Oral Presentations:

Complainants Jeff and Jolene Stewart -15 minutes (a portion of this time may be reserved for rebuttal)

Charles Mix County Commission -15 minutes

G. In the Matter of Open Meeting Complaint 2024-12 Tripp City Council

Oral Presentations:

Complainants Cody Fischer -15 minutes (a portion of this time may be reserved for rebuttal)

Tripp City Council -15 minutes

8. Discussion regarding future meeting.

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: 237 127 537 841

Passcode: YmqUmF

Or to join by **telephone** dial:

(605) 679-7263 with Phone conference ID: 212 419 247#

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 2024-12
MEETINGS COMPLAINT AGAINST TRIPP CITY COUNCIL –)	CERTIFICATE OF SERVICE
HUTCHINSON 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 Cody Fischer, PO Box 236, Tripp, South Dakota, 57376; and Mike C Fink, Fink Law Office, P.C., Po Box 444, Bridgewater, South Dakota 57319-0444, on this 21st day of October 2024.

Steven R. Blair

Assistant Attorney General 1302 East Highway 14, Suite 1 Pierre, South Dakota 57501

Telephone: (605) 773-3215