Office of
Deuel County
States Attorney

Attorney General

FEB 23 2026

THIRD FLOOR
DEUEL COUNTY COURTHOUSE

PO BOX 590
CLEAR LAKE, SOUTH DAKOTA 57226-0590
PHONE: 605-874-2840
FAX: 605-874-1340

February 17, 2026

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South Dakota Attorney General's Office
Open Meetings Commission
1302 East Highway 1889, Suite 1
Pierre, SD 57501

RE: Alleged Violation of Open Meeting Laws – City Council, City of Gary, SD

Dear Open Meetings Commission:

Please find enclosed the complaint and supporting investigative materials regarding the City Council of Gary, South Dakota, as outlined pursuant to SDCL § 1-25 and related statutes. The attached documents include the formal complaint, police reports, meeting minutes, and other relevant materials reviewed during the investigation.

Statement of Material Facts:
On December 1, 2025, the City Council of Gary, South Dakota, held its regular monthly meeting. During this meeting, the Council entered executive session for personnel and legal matters. The complaint alleges that three city employees were present in the executive session without a recorded motion or vote authorizing their presence, and that after being dismissed, one employee remained within earshot of the executive session, potentially overhearing confidential discussions. The complaint further raises concerns about a local conflict of interest affecting the impartial review of the matter at the county level (COMPLAINT 1-25-2, 1-27-1.6(7), 6-1-17.pdf, p. 9) .

Legal Questions:
The legal questions presented include:

1. Whether the City Council violated SDCL 1-25-2 by failing to properly authorize the presence of non-council members in executive session.
2. Whether the confidentiality of executive session was breached, contrary to SDCL 1-25-2 and SDCL 1-27-1.5(7).
3. Whether a conflict of interest exists under SDCL 6-1-17 that would prevent a fair review at the local level (id., p. 10) .

State's Attorney Findings:
There are three matters identified in the complaint. #3 is not within the purview of the Open Meetings Commission. Deuel County State's Attorney has reviewed this complaint and I will dismiss the #3 after the open meeting commission decides the remaining charges. Regarding #1 and #2, the Open Meeting Commission is in the best place to make this decision. I have avoided a review in this case as the matter is brought by a private citizen.

Related Litigation:
At this time, I am not aware of any ongoing litigation directly related to this complaint.

Enclosures:

- Formal complaint submitted by Rachel Hinsvark
- Police reports and investigative narratives from the Deuel County Sheriff's Office
- City of Gary meeting agenda and minutes for December 1, 2025
- Correspondence to the Attorney General's Office

Please contact me if you have any questions or require additional information regarding this complaint.

Sincerely,

Craig D. Evenson
Deuel County State's Attorney

enclosures

STATE OF SOUTH DAKOTA) IN CIRCUIT COURT
:SS
COUNTY OF DEUEL) THIRD JUDICIAL CIRCUIT

* * * \

COUNT 2

On or about the 1st day of December, 2025, in the County of Deuel, State of South Dakota, CITY COUNCIL, CITY OF GARY, SOUTH DAKOTA, did commit the public offense of VIOLATION OF OPEN MEETING – DISMISSED INDIVIDUAL OVER-HEARING EXECUTIVE SESSION, a Class 2 Misdemeanor, in violation of SDCL 1-25-2 and SDCL 1-27-1.5(7), in that CITY COUNCIL, CITY OF GARY, SOUTH DAKOTA, did, at said time and place, fail to ensure confidentiality of personnel information; and

COUNT 3

On or about the 1st day of December, 2025, in the County of Deuel, State of South Dakota, CITY COUNCIL, CITY OF GARY, SOUTH DAKOTA, did commit the public offense of VIOLATION OF OPEN MEETING – LOCAL CONFLICT OF INTEREST PREVENTING FAIR REVIEW , a Class 2 Misdemeanor, in violation of SDCL 6-1-17, in that CITY COUNCIL, CITY OF GARY, SOUTH DAKOTA, did, at said time and place, have a direct pecuniary interest in the matter before the governing body.

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

Dated this 26 day of January, 2026.

Rachel Hinsvark
RACHEL HINSVARK, COMPLAINANT

Subscribed and sworn to before me this 26 day of January, 2026.

(SEAL)

Notary Public, South Dakota

My Commission expires:
08-03-2030

Deuel County Sheriff's Office

400 4th Street West * * PO Box 217 * * Clear Lake, SD 57226-0217
Phone: (605) 874-8212 Fax: (605) 874-2916 Email: deuelco@itctel.com

Case DEU26-00083 Printed on February 6, 2026

Status	Approved
Report Type	Incident
Primary Officer	Cory Borg
Investigator	None
Reported At	02/03/26 16:59
Incident Date	02/03/26 16:59
Incident Code	SUSP : Suspicious Activity
Location	1113 SUMMIT ST, GARY, SD 57237
Zone	Other
Beat	
Disposition	Open
Disposition Date/Time	02/03/26 17:01
Review for Gang Activity	None

Dispatch Information

CFS # 202603852
Location 1113 SUMMIT ST, GARY, SD 57237
Incident Code SUSP : Suspicious Activity
Occurred Between 02/03/26 16:59:47 and
Assigned 17:01:05 **Enroute** 17:01:27 **On Scene** 17:01:27 **Completed** 17:01:27

Complainant

Hinsvark, Rachel E
Female, DOB 11/11/79
17980 486TH AVE
GARY, SD 57237
(605) 237-8207 Cell

1-25-2 - executive session or closed meetings - Unfounded
1-27-1.5 - Certain records not open to inspection and copying - Unfounded

Offender

City Of Gary
1113 SUMMIT ST
GARY, SD 57237

1-25-2 - executive session or closed meetings - Unfounded
1-27-1.5 - Certain records not open to inspection and copying - Unfounded

Suspect

City Of Gary
1113 SUMMIT ST
GARY, SD 57237

1-25-2 - executive session or closed meetings - Unfounded
1-27-1.5 - Certain records not open to inspection and copying - Unfounded

Primary Narrative By Cory Borg, 02/06/26 14:51

On February 3, 2026, I (Sheriff Borg 23-1A) was given a complaint that was filed with the South Dakota Attorney General's Office from Rachel Hinsvark. The Deuel County States Attorney's Office received the complaint from the Attorney General's Office and gave me the complaint to be investigated.

The complaint is regarding the City of Gary regular monthly meeting on December 1, 2025. I have attached the agenda and meeting minutes of December 1, 2025, for the City of Gary. The Deuel County States Attorney's Office subpoenaed any video and audio from that meeting.
I have reviewed the complaint from Rachel Hinsvark, the meeting agenda, and meeting minutes from December 1, 2025, for the City of Gary meeting. I have also searched for any state law violations that might have occurred.

First by looking at the agenda, executive session for personnel and legal are on the agenda in item 25.

By looking at the minutes, Nelson motioned, Christians 2nd to go into executive session for personnel and legal matters at 7:36pm, and the motion carried. The executive session lasted until 8:30pm. No action was taken after the executive session until the motion to adjourn the meeting.

By looking into SDCL 1-25-2, a board may go into the executive session for certain reasons. Both personnel and legal are approved for executive session. In SDCL 1-25-2 it does not state a board must approve who is in executive session by a vote or another motion.

My review of the 1st complaint is unfounded as the requirements of SDCL 1-25-2 were met.

The same with SDCL 1-25-2 being executive session, it is my opinion this is confidential and should not be shared or heard with anyone. That being my opinion, SDCL 1-25-2, does not specifically state that it is confidential. This to me would be a City of Gary internal matter that they should make sure employees or public cannot hear what they are discussing in executive session.

SDCL 1-27-1.5(7) refers to personnel information other than salaries are not open to inspection or copying. The complaint refers to nothing about copying or inspection of records.

My review of the 2nd complaint is unfounded as it does not fit SDCL 1-25-2 or SDCL 1-27-1.5(7).

Finally, I have reviewed the 3rd complaint of conflict of interest. The complaint is under SDCL 6-1-17 which directly talks about discussing or voting when they have a conflict of interest. The Deuel County States Attorney and I (Deuel County Sheriff) are not county commissioners, or on the City of Gary Counsel. SDCL 6-1-17 directly talks about officials disusing or voting when there is a conflict of interest. The South Dakota Supreme Court has decided Holborn v. Deuel County Board of Adjustment, Miles v. Spink County Board of Adjustment and Loves Travel Stops Country Stores inc. LLC v. City of Wall. These all deal with having a pecuniary interest in the vote cast. The States Attorney and I were not involved with the City of Gary meeting, have no voting rights at those meetings and have no pecuniary interest in the City of Gary.

My review of the 3rd complaint is unfounded as it does not fit SDCL 6-1-17.

I have also assigned Deputy Sheriff Nutter to review this case as well.

Sheriff Cory Borg 23-1A
Deuel County Sheriff's Office

Supporting Narrative By Matt Nutter, 02/06/26 14:40

On 2/3/2026, I, Investigator Matt Nutter with the Deuel County Sheriff's Office, was asked by Sheriff Cory Borg to

review a complaint against the city of Gary, South Dakota, that was sent to the Attorney General's Office. The complaint was referred back to the Sheriff's Office for review. Rachel Hinsvark made the complaint.

I reviewed the complaint and noticed it appeared to have been made by AI due to the layout. In the 1st part of the complaint, it alleges that three additional people remained in an executive session without authorization. The South Dakota Codified Law cited was SDCL 1-25-2. The codified law cited does not specify who is allowed in an executive session; it explains the reasoning for calling an executive session. I did not find that a law was violated in that section.

The second part of the complaint alleges that Joni Kjelden, the city finance officer, positioned herself directly outside the executive session room and was close enough to hear the conversations inside. The cited SDCLs were 1-25-2 and 1-27-1.5(7). 1-25-2 does not mention or specify who is allowed in an executive session; it explains the reasoning that an executive session can be called. 1-27-1.5(7) cites that personnel information other than salaries and routine directory information records is not open to inspection or copying. The SDCL cited does not apply to a person employed by the city being within "earshot" of an executive session. I did not find that a law was violated in that section.

The third part alleges a conflict of interest between Sheriff Cory Borg and Ms. Kjelden because Craig Evenson, Deuel County State's Attorney, informed Jodie Engesser that he could not assist her due to his close relationship with Sheriff Borg. Further stating that the complaint could not be addressed impartially at a county level. The SDCL cited was 6-1-17. SDCL 6-1-17 cites that an official is prohibited or voting on an issue if they have a pecuniary interest or a vote of at least two-thirds of the governing body votes that an official has an identifiable conflict they would be prohibited from voting. From my review of the city minutes, there was no vote in which the alleged people were involved; therefore, this codified law does not fit the crime committed.

Reviewing the complaint and city minutes, I did not see that a crime was committed. An outside agency, the Attorney General's Office of South Dakota, had also reviewed the complaint. As an impartial agency, I do not see that it is necessary for further action on the matter.

The complaint, and city minutes have been added to this case.

End of Report

Investigator Matt Nutter 23-1R
Deuel County Sheriff's Office

City of Gary, South Dakota
Joint Meeting- Board of Adjustment & City Council Meeting
Monday, December 1, 2025 at 6:30 pm at Gary City Hall

1. Call meeting to order
2. Pledge of Allegiance
3. Roll call
4. Additions/corrections to agenda- approval
5. Minutes of Nov 3rd regular meeting- approval
6. Warrants and claims for November, 2025- approval
7. Employee Contribution: Joni, Austin, Robin
8. Committee Reports:
   Golf Course- Doug *Sanitary*- Mike *Parks*- Jessica *Liquor*- Larry & Doug *Library*- Mike
   Streets/Alleys- Jay *Cemetery*- Neil *Law Enforcement*- Darwyn *Water/Sewer*- Darwyn & Neil

9. Ward Reports: *City Wide*: Mayor Larry Stoks *Ward I*: Darwyn Engesser & Neil Schumacher
   Ward II: Jay Grabow & Jessica Christians *Ward III*: Mike Nosbush & Doug Nelson

10. Public input:
11. Convene Jointly as Board of Adjustment & City Council
    a) Craig Otto- Variance request
    b) Public Hearing
    c) Permit approval
12. Adjourn as Board of Adjustment and convene only as Gary City Council
13. Community Club- "Gate City Christmas"
14. Gary Hudiburgh- City Infrastructure Request, Dakota Bridge Project updates
15. Deuel County Community Foundation Donation request
16. Ordinance No. 387- Supplement 2025 Appropriations
17. SRF 8th payment request approval- $89,913.00
18. Employee Christmas Party
19. Mark Johnson- sewer surcharge
20. Rachel Hinsvark- Gary Tax Payers
21. Written Complaints
22. SDML 2026 Membership Dues
    a) Annual Municipal Membership dues $532.00
    b) Renew affiliate Membership dues Finance Officers, Human Resource, Street Maintenance
23. Other discussion
24. Building permits issued in November: Doug Hulscher
25. Executive Session Pursuant to SDCL 1-25-2 (1) Personnel (3) Legal
26. Next meeting- year end 12/29/2025 – set time
27. Adjournment

City of Gary, South Dakota
Joint Meeting- Board of Adjustment and Council Meeting
Monday, December 1, 2025 at 6:30 pm at Gary City Hall

The Gary City Council met in joint session on Monday, December 1, 2025, at 6:30 pm in the City Hall.

The Pledge of Allegiance was said.

Mayor Larry Stoks presided. Aldermen Darwyn Engesser, Mike Nosbush, Doug Nelson, Jessica Christians, and Neil Schumacher were present. Jay Grabow was absent. Present also were Joni Kjelden, Austin Crocker, Robin Lanners, John DesLauriers, Pat Sears, Dave Mercer, Marlene Schumacher, Marilyn Koeppen, Billie Jo & Jeff Nordseth, Sherry Hemmingson, Bev Koeppen, Mark Johnson, Albert Bekaert, Jerry Tongen, Linda Weir, Gloria Dessler, Karen Keimig, Jim Kellen, Rod & Patty Meadors, Sara & Corey Stoks, Lori Nosbush, Lorna Melby, Craig Otto, Mel Borg, Judy Heth, Rachel Hinsvark, Jodie Engesser, Mary Nosbush, Jordan Hinsvark, Reed Mahlke, and Gary Hudiburgh.

Motion by Engesser, second by Nosbush to approve the agenda with a correction to line item 16 that Ordinance No. 387 is a first reading. All voting aye; carried.

Motion by Nosbush, second by Engesser to approve the minutes of the November 3, 2025 meeting. All voting aye; carried.

General-November 2025 Bills

Finance Office-2,157.58;Streets-3,255.88;Fire Dept-82.48;RUS-129.02;Library-790.00;Water-1,543.31;Sewer-2,629.49;Aflac-Oct premium-165.64;American Legal-draft billing-1,272.00;AT&T-data connect-44.19;Austin Crocker-cell phone-25.00;Bjerke Sanitation-2,448.80;BDRW-391,000 gallons-1,403.00;Christianson Plbg & Htg-repairs-3,622.84;City of Gary-wsg,firehall-41.42,garbage,city hall-17.00;Clear Lake Courier-proceedings,notices-85.29;Darrel TeKrony-water deposit refund-15.52;DCFU-fuel charges-148.10; DCSO-law enforcement-588.33;EFTPS/941 Tax-FWT-600.22,OASI-1,721.28;First District-zoning update-6,000.00;Florals & Finds-memoral-50.00;Gary Post Office-stamps-100.00;Gate City General-supplies-4.99;HD Electric-cemetery electricity-41.80;ITC-phone, internet, fax, alarm loop-96.20,Library-53.45;Milbank Winwater-150 water meter nodes-11,616.00;Ottertail Power Co.-electricity-715.21;Rangaard Electric, Inc-repairs/shop-263.83;Runnings-keys-3.99;SD Public Health Lab-20.00;SDML Worker's Comp-2026 WC renewal-4,788;SDRD-Nov contribution-1,214.22;Sun Life-465.00;Toshia Krantz-water deposit refund-80.00;Wellmark BCBS-Dec premium-2,640.66;Yellow Medicine Hwy Dept-cutting edge-829.30.

Liquor-November 2025 Bills

Liquor-13,492.10;Aflac-Oct premium-358.83;Cask & Cork-352.00;Chesterman-pop-543.50;City of Gary-wsg-195.02;Doll Distributing, LLX-beer,invoices-9,497.15;EFTPS/941 Tax-FWT-730.50,OASI-1,753.60;First Bank & Trust-credit card-563.79;Gary Post Office-39.00;Gate City General-food-3.96;Harry's Frozen Foods-pizza-693.00;Henry's Foods-tobacco,food,supplies-2,599.06;ITC-phone,DSL,TV-250.80;Johnson Bros.-liquor-1,940.55;Lizzy Hofer-November 8 entertainment-500.00;Office Peeps-supplies-thermal roll-82.40;Old Dutch Foods-chips-53.94;Ottertail Power Co-electricity-520.57;Pizza & Burger Shack-pizza-324.00;Porter Dist-beer,wine/coolers-930.30;Republic National Dist-liquor-1,133.55;Robin Lanners-cell phone-25.00;Southern Glazers of SD-liquor-197.90;SD Dept of Rev-Nov sales tax-3,064.18;SDML Work Comp-2026 work comp renewal-1,596.00;SDRS-Nov contribution-1,360.82;Star Laundry-rugs,towels-92.40;Vibe Entertainment-Nov 22 entertainment-350.00;Wellmark BCBS-Dec premium-3,395.13;

Motion by Engesser, second by Schumacher to approve the verified claims and issue warrants in payment thereof. All voting aye; carried.

Employee, committee, and ward reports were heard. There were no public comments.

Motion by Schumacher, second by Engesser to convene jointly as Board of Adjustment and Gary City Council. All voting aye; carried.

A public hearing was held for a variance request by Craig Otto to relax the front yard setback to allow enough room for a garage. With no public concern Nosbush motioned to approve the request, second by Schumacher. All voting aye; carried. Nosbush moved to adjourn and convene as City Council only, second by Nelson. All voting aye; carried.

Sara Stoks, representing the Gary Community Club informed the council of their lighted parade event "Gate City Christmas" on Saturday December 20, 2025.

Gary Hudiburgh was not available at his scheduled time but was present by the end of the meeting. He has been to Washington to meet with the South Dakota congressional delegation to present Gary's infrastructure needs. He is working on federal funding projects and gave an update.

Motion by Nosbush, second by Nelson to give $400 to the Deuel County Community Foundation. All voting aye; carried.

The first reading of Ordinance No. 387, supplementing the 2025 Appropriations was held. Second reading will be at the next meeting.

The eighth payment request from the State Revolving Fund loan in the amount of $89,913.00 was approved to send in with a motion by Nelson, second by Engesser. All voting aye; carried.

A committee was formed to plan an Employee Christmas party and bring to the next meeting for approval.

Mark Johnson was present to discuss the sewer service line to his property and the surcharge being implemented January 1. There was a lengthy discussion involving other residents in attendance, with winter approaching digging will not be feasible. Schumacher made a motion to reimburse the sewer surcharge to residents who dig and find the sewer line is already capped at the property line, by June 15th, 2026, second by Christians. All voting aye; carried.

Attendees at the November 3rd meeting who voiced complaints during public input were instructed to submit those complaints in writing. Prior to the current meeting, a binder of complaints was hand delivered to council members who chose to accept it. Rachel Hinsvark acknowledging the delivery of the binders, asked the council where they want to go from there. Mayor Stoks stated the binder would be sent with City Attorney Reed Mahlke. Reed will have an update at the next meeting.

A written complaint received regarding barking dogs will be turned over to the Attorney to send a letter to the dog owner.

South Dakota Municipal League membership for 2026 is due. Motion by Engesser, second by Schumacher to pay the Municipal League dues of $532.00. All voting aye; carried.

Motion by Nosbush, second by Engesser to renew the Municipal League Affiliate dues. All voting aye; carried.

Motion by Nelson, second by Christians to go into executive session for personnel and legal matters at 7:36 pm. All voting aye; carried. Motion by Schumacher, second by Nelson to exit at 8:30 pm. All voting aye; carried. No action was taken.

Building permits issued in November: Doug Hulscher.

The end of year meeting will be held on Monday, December 29, 2025 at 5:00 pm.

Motion by Engesser, second by Schumacher to adjourn. All voting aye; carried.

City Council, City of Gary
Joni Kjelden, Finance Officer
Published December 10, 2025
Published once at an approximate cost of $

12/02/2025

Attorney General

DEC - 4 2025

Attorney General Marty Jackley
Office of the Attorney General
1302 E Hwy 14, Suite 1
Pierre, SD 57501-8501

Re: Request for Review of Alleged Open Meeting Violations – City of Gary, South Dakota

Attorney General Jackley,

I am writing to formally request your review and intervention regarding **alleged violations of South Dakota's open meetings laws** committed by the **City Council of Gary, South Dakota** during its meeting on **December 1, 2025.**

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1. Improper inclusion of unauthorized individuals in Executive Session (SDCL 1-25-2)

During the December 1 meeting, the City Council made a motion to enter Executive Session. After the motion passed, **three city employees were kept inside the Executive Session without any recorded motion or vote authorizing their presence**, as required by **SDCL 1-25-2.**

The individuals who remained inside the Executive Session without authorization were:

- **Robin Lanners – Liquor Store Manager**
- **Joni Kjelden – City Finance Officer Assistant / Non-board Secretary**
- **Austin Crocker – City Utilities Manager**

The **City Attorney was also present.** While legal counsel may attend Executive Session for consultation, **SDCL 1-25-2 requires that any additional individuals be explicitly authorized through a vote**, which did not occur.

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2. Confidentiality breach — dismissed individual overhearing Executive Session (SDCL 1-25-2 and SDCL 1-27-1.5(7))

A second violation occurred involving **Joni Kjelden,** who also acts as the non-board secretary. After being dismissed from Executive Session, she positioned herself **directly outside the Executive Session room,** in the hallway between the library and city office—close enough to hear the ongoing discussion.

See backside

Laserfiche

I became aware of this when I was asked to step outside during Executive Session and waited in the public library area. When I used the hallway restroom, I **clearly heard the Executive Session discussion** through the door and immediately left, knowing that remaining would be improper.

Later, when **Jodie Engesser** used the restroom, she discovered **Ms. Kjelden seated on a chair directly inside the hallway**, plainly within earshot of the confidential discussion.

SDCL 1-25-2 requires that Executive Session discussions remain private, and allowing an unauthorized individual to overhear those discussions violates the purpose of the statute. Additionally, **SDCL 1-27-1.5(7)** protects personnel matters as confidential, further highlighting the importance of strict Executive Session privacy.

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3. Local conflict of interest preventing fair review (SDCL 6-1-17)

This matter cannot be addressed impartially at the county level. The Deuel County State's Attorney Craig Evenson previously informed **Jodie Engesser** that he could not assist her due to his close working relationship with **Sheriff Cory Borg**, who has a close personal relationship with **Ms. Kjelden.**

Under **SDCL 6-1-17**, public officials must avoid conflicts of interest or even the appearance of such conflicts. The State's Attorney's stated conflict demonstrates the need for neutral state-level review.

Requested Action

I respectfully request that your office:

1. **Investigate the December 1, 2025 Executive Session** for compliance with SDCL 1-25-2.
2. **Review the unauthorized inclusion and overhearing of Executive Session discussions**, contrary to SDCL 1-25-2 and SDCL 1-27-1.5(7).
3. **Provide corrective guidance, training, or enforcement action** to ensure the City of Gary complies with South Dakota open meetings laws.
4. Consider the county-level conflict of interest (SDCL 6-1-17) and determine whether direct oversight by your office is necessary.

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Thank you for your time and attention. I am prepared to provide additional details, documentation, or sworn statements if needed.

Respectfully submitted,

Rachel Hinsvark605-237-8207

Gary, South Dakota

Rachel D. Hinsvark

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Rachel Hinsvark
19800 486th Ave.
Burns SD 57237

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Attorney General
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