

SRB
Attorney General
427750
JAN 24 2020
PAUL M. LEWIS

MOODY COUNTY
STATE'S ATTORNEY

310 S. Wind Street
P.O. Box 347, Flandreau, SD 57028-0347
Phone: (605) 997-2207
Fax: (605) 573-4533
E-Mail: paul@bruninglewis.com

January 22, 2020

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

RE: *City of Ward Open Meetings Complaint*

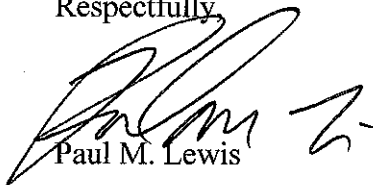
Dear Assistant Attorney General Blair,

In accordance with SDCL Chapter 1-25, please find enclosed with this letter the following materials for review by the Open Meetings Commission:

1. Complaint;
2. Report from the Moody County Sheriff's Department;
3. November 4, 2019, Ward Town Minutes; and
4. December 3, 2019, Ward Town Minutes.

Thank you for your attention to this matter, and I look forward to any questions, comments, or concerns that you may have.

Respectfully,



Paul M. Lewis

Encls.

STATE OF SOUTH DAKOTA)
: SS.
COUNTY OF MOODY)

IN CIRCUIT COURT
THIRD JUDICIAL CIRCUIT

* * * * *

TOM KAMPMANN,

Plaintiff,

COMPLAINT FOR
COUNT 1:

- vs-

**VIOLATION OF OPEN MEETINGS
REQUIREMENT**
(SDCL 1-25-1)

CITY OF WARD, SOUTH DAKOTA,
309 223rd Street
Ward, SD 57026

Class 2 Misdemeanor

COUNT 2:

VIOLATION OF MEETING NOTICE
(SDCL 1-25-1.1)

Defendant,

Class 2 Misdemeanor

* * * * *

The undersigned being duly sworn upon oath charges:

COUNT 1

That on or about November 8, 2019, in Moody County, South Dakota, the BOARD OF TRUSTEES for the CITY OF WARD, did commit the offense of **Violation of Open Meeting Requirement** (SDCL 1-25-1) in that the Board, composed of Scott Handberg, Ron Thomas Jorgensen, and Arlette Ann Reeves, constituting a quorum of the governing body, officially met with Elias and Renato Stoltzfus at their farm in Minnesota for the purpose of arranging for the eventual contracting of community-wide snow removal in the City of Ward for the winter of 2019 and 2020, said meeting not open to the public; and as to

COUNT 2

That on or about November 8, 2019, in Moody County, South Dakota, the BOARD OF TRUSTEES for the CITY OF WARD, did commit the offense of **Violation of Meeting Notice** (SDCL 1-25-1.1) in that the Board failed to provide a public notice, with proposed agenda, visible, readable, and accessible for at least an entire, continuous twenty-four hours immediately preceding an official meeting, by posting a copy of the notice, visible to the public, at the principal office of the City of Ward prior to the Board, composed of Scott Handberg, Ron Thomas Jorgensen, and Arlette Ann Reeves, constituting a quorum of the governing body, meeting with Elias and Renato Stoltzfus at their farm in Minnesota for the purpose of arranging for the eventual contracting of community-wide snow removal in the City of Ward for the winter of 2019 and 2020,

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

That complainant states that this Complaint is based upon investigation by the Moody County Sheriff's Office. Attached hereto is a copy of law enforcement's investigative work product.

Complainant further states that he is unaware of any pending litigation attendant to this matter.

Complainant finally states that this case presents the following issues for consideration by the Open Meetings Commission:


- a. Is SDCL Chapter 1-25 binding upon governing bodies meeting outside of the State of South Dakota?
- b. Was the November 8, 2020, Board of Trustees meeting exempted from complying with the requirements of SDCL 1-25-1?
- c. Did circumstances exist to allow the Board of Trustees to forgo compliance with the mandates of SDCL 1-25-1.1?

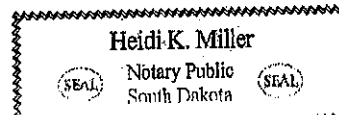
To each of the aforementioned issues, I refer this matter for deliberation by the Open Meeting Commission.

Dated January 29, 2020, in Flandreau, South Dakota.


Complainant

Subscribed and sworn to before me January 29, 2020.


Notary Public, South Dakota
Commission expires: 01-30-2025





Status	Approved
Report Type	Incident
Primary Officer	Troy Wellman
Investigator	None
Reported At	11/18/19 14:58
Incident Date	11/18/19 14:58
Incident Code	INFO : Informational
Location	City of Ward, Ward
Disposition	Closed - Charges Filed
Disposition Date/Time	11/21/19 17:25

Unspecified

HANDBERG, SCOTT

Male, DOB 5/22/75

327 223RD ST

WARD, SD 57026

(605) 864-8914 Business

JORGENSEN, RON THOMAS

Male, DOB 8/29/66

816 223rd Street

WARD, SD 57026

KAMPMANN, TOM H

Male, DOB 12/20/62

324 223RD ST

WARD, SD 57026

KUEHL, CHARITY

Female, DOB 6/5/65

205 Pine St

Ward, SD 57026

(605) 690-8763 Cell

REEVES, ARLETTE ANN

Female, DOB 12/16/56

200 2ND ST

WARD, SD 57074

Primary Narrative By Troy Wellman, 11/18/19 16:20

On 11-14-19 Tom Kampmann had contacted the Moody County Sheriff's office wanting to talk to me in regards to an open meeting violation that had occurred with in the Ward City Council. I advised Tom that he would need to write a written statement as well as provide any documentation that he had in conjunction with his complaint. On Friday 11-15-19 Tom brought in both the hand written statement and the email chain that are attached to this report. According to the written statement provided by Kampmann there was a meeting that was not advertised and was not open to the public between the 3 trustees and two people identified as Elias and Renato Stoltzfus according to Mr. Kampmann's statement. The meeting was held at the Stoltzfus farm located in Minnesota and the three trustees were present to discuss snow removal for the town of Ward. The meeting was not posted, no special meeting was called, and it was not open to the public. At this time, this concludes my report, Sheriff Troy Wellman.

Supporting Narrative By Troy Wellman, 12/02/19 15:06

On 12-02-19 I received an email from the Moody County Sheriff's Office asking me to follow up with other city council members. I reached out to Scott Handberg 12-02-19 at approximately 1510 hours. I asked him the following questions:

- 1) Did the Ward Board of Trustees meet on November 7th 2019? When asked specifically about what I mentioned the snow moving meeting, he answered not sure of the dates but that sounds close.
- 2) Who was Present? The three board members
- 3) Where did the meeting take place? At the home/farm of Stoltzfus Farms LLC.
- 4) What time did the meeting start? Mid morning
- 5) How long did it last? About 15 minutes
- 6) Was there an agenda for the meeting? No
- 7) If there was not an agenda? No we just went to talk price
- 8) Did the Board of Trustees take action at that meeting? We agreed on a price, and were going to wait till the meeting to be held this week.

Scott advised that they were advised by Charity to talk to Stoltzfus face to face. The three board members decided to go out there that day. They didn't think there was anything wrong with going out to talk with him as a board, as they had received no bids for snow removal and that Stoltzfus had done it last year.

I did not reach out to any of the other Board members. End of Supplemental Report, Sheriff Troy Wellman. 12-02-19

Case Forms

Attached Document 11/18/19 - Ward City Council Open Meeting Law
Primary Narrative 11/18/19 by Troy Wellman
Supporting Narrative 12/2/19 by Troy Wellman

VOLUNTARY STATEMENT
(NOT UNDER ARREST)

I, Tom Kampmann, am not under arrest for, nor am I being detained for any criminal

offenses concerning the events I am about to make known to Moody County Sheriff.
Without being accused of or questioned about any criminal offenses regarding the facts I am about to state, I volunteer the following information of my own free will, for whatever purposes, it may serve.

Ph. 605-690-776

I am 56 years of age, D.O.B. 12/20/62 and I live at 324 223rd St Ward SD 57026

On November 8, 2019, Scott Handberg, Arlette Reeves, and Tom Jorgensen - The Ward Town Council met with Elias and Renato Stoltzfus at their farm located in Minnesota to discuss snow removal for the Town of Ward. They awarded the contract that day.

There was no agenda posted or special meeting called.

I have read each page of this statement consisting of 2 page(s), each page of which bears my signature, and corrections, if any, bear my initials, and I certify that the facts contained herein are true and correct.

Dated at 11-15-19, this _____ day of _____,

WITNESS: [Signature]

WITNESS: _____ Signature of person giving voluntary statement



Charity Kuehl <ckuehl65@gmail.com>

agenda

5 messages

Charity Kuehl <ckuehl65@gmail.com>

Sun, Nov 3, 2019 at 2:07 PM

To: Scott Handberg <littlejoe1975@yahoo.com>, Tom Jorgensen <TomoverT3@yahoo.com>

Attached is the agenda for the meeting Monday night at 8:00

—
Charity Kuehl

 **Agenda.doc**
31K

Charity Kuehl <ckuehl65@gmail.com>

Wed, Nov 6, 2019 at 5:30 PM

To: Scott Handberg <littlejoe1975@yahoo.com>, Tom Jorgensen <TomoverT3@yahoo.com>

What was found out with snow removal?

Thanks

[Quoted text hidden]

—
Charity Kuehl

Scott Handberg <littlejoe1975@yahoo.com>

Thu, Nov 7, 2019 at 9:04 AM

To: Charity Kuehl <ckuehl65@gmail.com>

They want to meet in person and talk about it

Sent from my iPhone

[Quoted text hidden]

Charity Kuehl <ckuehl65@gmail.com>

Fri, Nov 8, 2019 at 9:39 PM

To: Scott Handberg <littlejoe1975@yahoo.com>, Tom Jorgensen <TomoverT3@yahoo.com>

So did we have a special meeting to approve snow removal? Who and how much?

[Quoted text hidden]

—
Charity Kuehl

Scott Handberg <littlejoe1975@yahoo.com>

Fri, Nov 8, 2019 at 11:08 PM

To: Charity Kuehl <ckuehl65@gmail.com>

We met with Elias as instructed by the council Monday night and agreed to his terms of \$125 an hour. Since there were no bids we could talk to and negotiate with him. He and Renato are the only ones authorized by the council to remove snow.

Sent from my iPhone

[Quoted text hidden]

Ward Town

WARD TOWN REGULAR MEETING November 4, 2019

Regular Council meeting was held November 4, 2019 8:00 p.m. at the Community Center.

Members present: Trustees: Scott Handberg, Ariette Reeves, Tom Jorgensen and Charity Kuehl FO. Also present was Clair Barthel, Kathy Baker, and Debbie Handberg.

Minutes were approved from last month. Jorgensen made a motion 2nd by Reeves.

Water Department: Everything is working well at the pump house. Maguire Iron come and checked the tank found an air leak by the glass tube. All the other areas looked good.

Animal Control: Nothing. She trapped one cat and rehomed and got 3 raccoons.

Business: First Monday Supper: There will be no supper for December watch for posters for January. We have good turnouts and good follow-

ship. Thanks to all in attendance

Tiling/Water/Streets-Tom is still working on the waiver. They have contacted Scott with C & K Construction and Dave Meyers they are still both interested and not available until next spring.

Building: The resident wants to keep the building and Scott and Ariette are going to help him get it done on Friday November 8, 2019. The building at the park needs to be put back on the foundation. The council will look at it.

Snow Removal-No bids received. It was discussed if we cannot find anyone that everyone will have to do their own snow removal. Scott was instructed to call Stoffuz Farms to see if they were interested again.

Streets: We need a couple loads of gravel down by Bolis. Scott will call for 2 loads; Tom is to talk to Ed not to have the bus parked down by the house and tear up the streets.

Bills were presented and approved.

Reeves made a motion to pay said bills 2nd by Jorgensen. Clair Barthel \$518.88; Charity Kuehl \$73.88; Moody County Enterprise \$48.56; Eng Services \$152.60; Otter Tail Power \$293.82; SD One Call \$4.20; Midwest Glass \$97.96; SDML Workers Comp Fund \$615.00; Debbie Handberg \$40.00; and SDUI \$0.67

Citizen comments: A beautification fund was brought up to help residents. Deb will look into this. Blue mail box for outgoing property Scott will look into this with post office. Dump ground had pictures from Nick Emme with SD Department of Natural Resources

No further business, Reeves made a motion to adjourn 2nd by Jorgensen.

Next Council meeting will be held December 3, 2019, 7:00 p.m. at the Community Center.

Charity Kuehl, Finance Officer
Published once at the approximate cost of \$26

Moody County Enterprise • Since 1878

(35) Township One Hundred Six 2019. Minutes submitted for approval at the next meeting. The average assessed value of property in the township shall not exceed the average mill levy and average assessed value of property in the township. The snowmobile is operated with the consent of the property owner or agent. Law Enforcement Personnel may confiscate snowmobiles.

**WARD TOWN
REGULAR MEETING
December 3, 2019**

Regular Council meeting was held December 3, 2019 7:00 p.m. at the Community Center.

Members present: Trustees: Scott Handberg, Arlette Reeves, Tom Jorgensen and Charity Kuehl FO. Also present was Attorney Corey Bruning, Clair Barthel, Doug Martens, Tom Kampmann, Cody & Heidi Huewe, Annette Mitchell, Geoffrey Drapeau, Steve Toews, and Debbie Handberg.

Minutes were approved from last month: Jorgensen made a motion 2nd by Reeves with the correction that Doug Rasmussen is the property that they looking at. And snow removal that Scott was instructed to call or visit with Stoltzfus Farms.

Water Department: Everything is working well at the pump house.

Animal Control: Got a raccoon and skunk.

Business: First Monday Supper: There will be no supper for December watch for posters for January. We have good turnouts and good fellowship. Thanks to all in attendance.

Tiling -Tom is still working on the waiver. Waiting until January to contact Scott Knudson and/or Dave Meyers.

Snow Removal-Scott had talked to Elias and they wanted to meet. So all three council members went out to Stoltzfus Farms and met with them. Reeves made a motion 2nd by Jorgensen to approve snow removal for \$125.00 per hour. Would only like to be instructed by the council on the removal. Jorgensen contacted Double D Gravel about hauling snow out if we get a lot like last year and no place to go with it.

Streets: Reeves will talk to Ed Boll about the bus to keep it parked up on Main Street or we will have to put a load limit on the road by them as it is tearing up the road with it being so wet.

Bills were presented and approved. Reeves made a motion to pay said bills 2nd by Jorgensen. Scott Handberg \$78.00; Arlette Reeves \$76.50; Tom Jorgensen \$76.50; Clair Barthel \$263.88; Charity Kuehl \$73.88; Moody County Enterprise \$25.99; Eng Services \$152.60; Otter Tail Power \$502.33; SDML \$86.22; SD Gov't FO Assoc. \$40.00; Double D Gravel \$332.12; and Tom Jorgensen \$75.00.

Citizen comments: Scott and Deb have not got a response on the blue box for outgoing mail. Scooping the community center sidewalk was brought up and put on the street department. Some other residents will try to help out if needed. There is a 24 hour snow removal from sidewalks after the snow stops for a reminder. Doug Martens has brought up that his foundation is not good on his property and would like landscaping done between his property and the community center instead of the lawn mower going in there.

No further business, Reeves made a motion to adjourn 2nd by Jorgensen.

Next Council meeting will be held January 7, 2020, 7:00 p.m. at the Community Center.

Charity Kuehl, Finance Officer
Published once at the approximate cost of \$29

SE-1/4 INC. LOT 4 BUT EXCLUDING TRACT 1 WOOD'S ADDITION SEC. 8-105-49 4869.70

WOOD, GRANT & JULIE
NE-1/4 EXC. LOT 1 WOOD'S ADDITION SEC. 16-105-49 5939.47

WOOD, GRANT & JULIE
LOT 1 WOOD'S ADDITION NE-1/4 SEC. 16-105-49 2674.60

LYNN TOWNSHIP

HOYER, CLARK & JESSICA
S-480' W-150' SE-1/4SW-1/4 & SW-1/4SW-1/4 EXC. N-4 RODS SEC. 9-105-50 3128.29

CHRISTENSEN, MELVIN ETUX
NE-1/4 & SW-1/4 EXC. S-430' E-230' W-1810' & SE-1/4 EXC. TRACT A LINDHOLM 4297.24

GROVENA TOWNSHIP

GCKENGA, JOHN & BARBARA
N-686' E-413' NE-1/4 EXC. LOT H-3 SEC. 8-106-48 1436.20

ORLAND, BRETT
E-407' W-1260' N-464' S-564' NE-1/4 & E-33' W-853' NE-1/4 EXC. S-100 OF SAID E-33' SEC. 23-106-48 1791.94

EGAN TOWNSHIP

BREVENTIVE HEALTH STRATEGIES
SE-1/4 EXC. MICHAEL HEMMER'S CONSERVATION EASEMENT TRACT 1 SEC. 35-106-49 1003.98

BREVENTIVE HEALTH STRATEGIES
MICHAEL HEMMER'S CONSERVATION EASEMENT TRACT 1 SEC. 35-106-49 24112.53

COLMAN TOWNSHIP

DRONG, GENE & BOBBI
TRACT 1 NE-1/4 EXC. N-660' E-660' BUT INCLUDING E-50' N-210' & INCLUDING S-450' E-460' SEC. 11-106-50 1045.93

FLANDREAU TOWNSHIP

JOHNSON, EVELYN
LOT 40 - PARK SEC. 23-107-48 23.10

JEFFERSON TOWNSHIP

KERFORD, PAM
E-587.4' NE-1/4NE-1/4 LYING N OF PARCEL 3 SEC. 28-107-50 865.87

MYHRE, DEANNA
NW-1/4 SEC. 35-107-50 1902.07

WARD TOWNSHIP

PAULSEN, LENORE FAMILY TRUST
LOT B L. & L. PAULSEN ADDITION SE-1/4 SEC 31-108-47 26.51

JORGENSEN, MARY LOUISE
LOT 1B JORGENSEN S.D. NW-1/4 SEC. 33-108-47 425.89

SPRING CREEK TOWNSHIP

JOHNSON, VERNELL TRUST
NW-1/4 SEC. 17-108-48 4337.37

JONES, JAMES & JANICE
E-515' N-1375' NE-1/4 SEC. 34-108-48 1244.11

RIVERVIEW TOWNSHIP:

MURRAY, BRETT & KATRINA
LOT 1 LUTTMANN ADD & N-602.49' S-1874.4' W-296' SEC. 30-108-49 837.5

LOTS 13-14-15 BROAD AVENUE MOBILE HOME PARK ADDITION 739.69

FLANDREAU CITY OLB OF PETTIGREW'S OL

BENNETT, KATIE
E-32' LOT 18 & LOT 19 OUT LOT B OF PETTIGREW'S OUT LOTS SEC. 28-107-48 469.08

FLANDREAU CITY RAILROAD ACQ.

PETERS, LARRY JR & LORI
LOT 7 EXC. W-19' & LOT 8 BLOCK 3 RAILROAD ADDITION 66.68

EAGLE FEATHER, LEVI JR
LOTS 1 & 8 BLOCK 7 RAILROAD ADDITION 31.12

EAGLE FEATHER, LEVI JR
LOTS 6-7 BLOCK 7 RAILROAD ADDITION 31.12

COLMAN CITY ORIGINAL PLAT

VAN MEVEREN, JOHN
W-60' LOT 3 & W-60' S-10' LOT 4 & LOTS 10-11-12-13-14-15-16-17-18 BLOCK 2 103.68

ROSS, GERALD & SALLY
LOTS 17-18 BLOCK 6 ORIGINAL PLAT 793.05

MOORE, ALAN & HILL, SHANNON & MOELLER, RICHARD AND JACQUELINE
N-1/2 LOT 5 & LOT 6 BLOCK 16 ORIGINAL PLAT 1316.87

COLMAN CITY FAIRBANKS ADDITION

LEEDS, CHARLES & MICHELLE
S-54' W-1/2 LOT 2 BLOCK 1 FAIRBANKS ADDITION 318.25

ROSS MANAGEMENT, INC.
LOT 3 EXC E-150' BLOCK 1 FAIRBANKS ADDITION 130.05

LEEDS, CHARLES
N-1/2 E-150' LOT 3 BLOCK 1 FAIRBANKS ADDITION 361.19

ROSS MANAGEMENT, INC.
W-1/2 LOTS 4-5 BLOCK 1 FAIRBANKS ADDITION 260.37

ROSS MANAGEMENT, INC.
LOTS 6 & 7 BLOCK 2 FAIRBANKS ADDITION 310.34

COLMAN CITY

ALBERS, BILLIE JO
S-1/2 E-175' LOT 5 SE-1/4 SEC. 15-106-50 A/K/A LOT 5A 523.27

EGAN CITY ORIGINAL PLAT

MARKUS, GREGORY
LOT 1 BLOCK 4 ORIGINAL PLAT 327.43

SMIDT, DOUGLAS & LISA
LOTS 3-4 BLOCK 5 ORIGINAL PLAT 275.82

MARKUS, JACOB
LOT 3 BLOCK 15 ORIGINAL PLAT 192.72

KREMPGES, BERNARD
LOT 1 BLOCK 22 ORIGINAL PLAT 589.91

VAN DYKE, JERALD
LOTS 9-10-11-12 BLOCK 23 ORIGINAL PLAT 435.02

EGAN CITY LEINBACHS ADDITION

JENSEN, CHARLEEN
LOTS 11-12 BLOCK 2 LEINBACHS ADDITION 923.70

EGAN CITY ALFRED BROWN ADDITION

MARKUS, GREGORY
LOT 2 BLOCK 4 ALFRED BROWNS ADDITION 43.96

WESTLEY, KELLI
LOTS 11-12-13-14 BLOCK 6 AL-

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
TTY (605) 773-6585
www.atg.sd.gov

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. MCGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

January 31, 2020

Tom Kampmann
324 223rd Street
Ward, SD 57026

Re: In the Matter of Open Meeting Complaint 2020-01, Board of Trustees for the City of Ward – Moody County

Dear Mr. Kampmann,

This letter is to acknowledge receipt of an open meetings complaint filed by you against the Board of Trustees for the City of Ward. Moody County State's Attorney Paul M. Lewis 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 Board for their response. I have asked the Board to file a response no later than February 28, 2020. I have also requested that the Board 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: Board of Trustees for the City of Ward
Paul M. Lewis – Moody County State's Attorney

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
TTY (605) 773-6585
www.atg.sd.gov

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. MCGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

January 31, 2020

Board of Trustees
City of Ward
309 223rd Street
Ward, SD 57026

Re: In the Matter of Open Meetings Complaint 2020-01, Board of Trustees for the City of Ward – Moody County

Dear Board of Trustees,

I assist the South Dakota Open Meetings Commission with their duties. Moody County State's Attorney Paul M. Lewis has forwarded to the Commission, pursuant to SDCL 1-25-6(3), a complaint concerning the Board of Trustees for the City of Ward. The complaint was signed by Tom M. Kampmann. Enclosed is a copy of all the materials I have received.

If the Board of Trustees wishes to file a response to the complaint, please send it to the above address on or before February 28, 2020. Please also send copies of any response to Tom Kampmann, 324 223rd St., Ward, South Dakota 57026, and to State's Attorney Paul M. Lewis.

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.

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: Tom Kampmann

Paul M. Lewis – Moody County State's Attorney

Attorney General
42846
MAR - 2 2020

Steven J. Britzman
Attorney at Law

521 Sixth Street, Suite 104
Brookings, South Dakota 57006

Telephone (605) 697-9058
Facsimile (605) 697-9060
Email: britzmanlaw@brookings.net

February 27, 2020

Steven R. Blair
Assistant Attorney General
Office of Attorney General
1302 East Hwy 14, Ste. 1
Pierre, SD 57501-8501

Re: In the Matter of Open Meetings Complaint 2020-01, Board of Trustees for the
City of Ward – Moody County

Dear Steve:

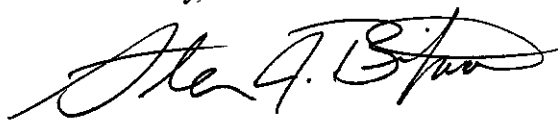
I am appearing on behalf of the City of Ward in this matter.

I enclose Answer of Defendant City of Ward to the Complaint in the above-referenced matter. Copies have likewise been provided to the Plaintiff and to Paul Lewis.

Please contact me if I can assist in providing additional information in this matter.

Thank you very much.

Sincerely,



STEVEN J. BRITZMAN
Attorney at Law

cc: Tom Kampmann w/ encl.
Paul M. Lewis, Moody County States Attorney w/ encl.

STATE OF SOUTH DAKOTA	)	IN CIRCUIT COURT
	)ss	
County of Moody	)	THIRD JUDICIAL CIRCUIT
TOM KAMPMANN,	)	OPEN MEETINGS
	)	COMPLAINT 2020-01
Plaintiff,)	
	)	ANSWER OF DEFENDANT
vs.	)	CITY OF WARD TO
	)	COMPLAINT FOR COUNT 1:
CITY OF WARD, SOUTH DAKOTA,	)	VIOLATION OF OPEN MEETINGS
309 – 223 rd Street	)	REQUIREMENT (SDCL 1-25-1)
Ward, SD 57026	)	AND COUNT 2
Defendant.	)	VIOLATION OF MEETING NOTICE
	)	(SDCL 1-25-1.1)

The City of Ward, South Dakota, by and through its attorney, Steven J. Britzman, submits the following answer and response to the Complaint of the Plaintiff alleging violation of Open Meetings Requirement SDCL 1-25-1 and Meeting Notice Requirements set forth in SDCL 1-25-1.1.

The City of Ward asserts the following occurred:

1. The City solicited bids for snow removal for the City of Ward by a publication in the city's legal newspaper.
2. No bids to perform snow removal were received in response to the published Notices to Bidders.
3. It was suggested during the November 4, 2019 Ward City Council meeting by the Ward Finance Officer, Charity Kuehl, that Scott Handberg, the Ward City Council President, should contact Elias Stoltsfas, who had provided snow removal for the City of Ward the previous year. The objective of that visit was to determine why Stoltsfas did not want to perform snow removal this year and whether he would reconsider.
4. Since there were no bids received, Handberg understood under State law and City ordinance that the City could negotiate a contract for the purchase of snow removal services if the specifications of the original bid notice were met.
5. Handberg contacted Stoltsfas who insisted that Handberg come to his farm and talk about the issue, as he did not want to do it over the phone. Stoltsfas apparently had complaints about his snow removal experience in Ward the prior year, and Handberg agreed to go to Stoltsfas' farm to discuss these issues and hopefully determine if Stoltsfas would perform snow removal this year.
6. In order to avoid having to call the other Ward Council members and repeat the information from the meeting with Stoltsfas, Handberg asked the other Council members to come along and hear first-hand what Stoltsfas' complaints were.

Again, this meeting occurred at Stoltsfas' farm which is where Stoltsfas was willing to meet.

7. At Stoltsfas' farm, Stoltsfas expressed that he wanted more money and only wanted to answer to the Ward Council and not to other people in town who had in the past called him to complain or ask about when snow removal would be performed.
8. Stoltsfas also stated that Tom Kampman and Steven Toews had told him that they also wanted to be paid for street areas they cleaned. Handberg and the other Council members listened and told Stoltsfas they would discuss snow removal at a Council meeting. Since there was snowfall forecasted for the next day, Stoltsfas was asked if he would be willing to come to Ward and clean out the snow without a contract. He agreed to do so until a new contract could be addressed at a Ward City Council meeting.
9. No City-related issues were discussed except the possible provision of snow removal services by a reluctant contractor.
10. At the following Ward City Council meeting on December 3rd, a new snow removal contract with Stoltsfas was discussed and approved.

The City of Ward asserts it did not violate the South Dakota Open Meetings laws for the following reasons:

1. The meeting with Stoltsfas constituted a negotiation pursuant to SDCL 5-18A-5, because no snow removal bids had been received after advertising, and the City of Ward needed to reach out to the former snow removal contractor, hear his complaints and attempt to convince him to perform snow removal with snowfall imminent. The purpose, scope and substance of this meeting with Stoltsfas was a negotiation to obtain snow removal services. The fact a quorum of Ward City Council members were present was to facilitate a successful negotiation.
2. The meeting with Stoltsfas also included a quorum of the trustees for a municipality of the third class. In accordance with SDCL 1-25-1, a meeting of these Trustees solely for purposes of carrying out ministerial functions or for the purpose of undertaking a factual investigation of conditions related to public safety is not subject to SDCL 1-25-1. Procuring the agreement by a former snow removal contractor to perform snow removal with snowfall imminent falls into the category of a ministerial function. Moreover, agreeing to meet with a reluctant contractor who apparently had complaints he wanted to air in person would fall in the category of a factual investigation of conditions related to public safety.
3. Notice of a meeting under SDCL 1-25-1 for the purposes set forth above would not be required where the meeting is not subject to the provisions of SDCL 1-25-1.
4. SDCL 5-18A-9 permits a purchasing agency to make an emergency procurement where there exists a threat to public health, welfare, or safety or for other urgent and compelling reasons. The lack of a snow removal contractor for the City of Ward as of November 8th factually constitutes an urgent or compelling reason to


attempt to make an emergency procurement of snow removal services. Given the demand that the meeting take place at the former contractor's farm, it was perceived the chances of a successful negotiation and better communication with Stoltsfas would be improved if there were several council members present to hear his complaints and convince him to give it another try. The presence of the additional council members facilitated the successful negotiation and nothing more.

5. The Council members recognized that a snow removal contract required public discussion and action at a Council meeting (which occurred on December 3rd), and therefore there was no action taken other than to address a threat to public safety.

Based on the foregoing factual statements and because the nature of the meeting with Stoltsfas was to hear his complaints and persuade him to perform snow removal through negotiation, SDCL 1-25-1 and 1-25-1.1 were not violated as alleged, and Defendant City of Ward requests that the Complaint of Plaintiff be dismissed.

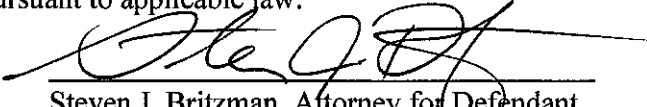
Dated at Brookings, South Dakota this 27 day of February, 2020.

CITY OF WARD, SOUTH DAKOTA, Defendant

By: 
Steven J. Britzman, Attorney for
City of Ward, South Dakota, Defendant
521 Sixth Street
Brookings, SD 57006
(605) 697-9058

CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that I served a true copy of the within Answer of the Defendant, upon Tom Kampmann, 324 – 293RD Street, Ward, South Dakota 57026, Plaintiff and Paul M. Lewis, Moody County States Attorney, and Steven R. Blair, Assistant Attorney General, Office of the Attorney General, and that service was made by depositing a true copy of said document at the U.S. Post Office in Brookings, South Dakota 57006 on the 27 day of February, 2020, for delivery and service by first class mail pursuant to applicable law.


Steven J. Britzman, Attorney for Defendant
City of Ward, 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

TTY (605) 773-6585

<http://atg.sd.gov/>

JASON R. RAVNSBORG
ATTORNEY GENERAL

CHARLES D. McGUIGAN
CHIEF DEPUTY ATTORNEY GENERAL

October 9, 2020

Tom Kampmann
324 233rd Street
Ward, South Dakota 57026

Steven J. Britzman
Attorney at Law
521 Sixth Street, Suite 104,
Brookings, South Dakota 57006

Re: In the Matter of Open Meeting Complaint 2020-01, Board of Trustees for the
City of Ward – Moody County

Dear Mr. Kampmann & Mr. Britzman:

Enclosed please find the Notice of Hearing, and proposed agenda, regarding the
October 23rd teleconference meeting of the Open Meetings Commission. As you can
see from the agenda, presentations regarding complaints will begin at 9:30 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 black ink, appearing to read "SRB", followed by a horizontal line.

Steven R. Blair
Assistant Attorney General

SRB/jm
Enclosures

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	OMC 2020-01
MEETINGS COMPLAINT AGAINST)	
BOARD OF TRUSTEES FOR THE	)	NOTICE OF HEARING
CITY OF WARD – MOODY COUNTY)	

TO: Tom Kampmann, 324 233rd Street, Ward, South Dakota 57026; Steven J. Britzman, Attorney for Board of Trustees for the City of Ward, 521 Sixth Street, Suite 104, Brookings, South Dakota 57006:

Please take notice that a telephonic hearing regarding the above referenced open meetings complaint will be held before the South Dakota Open Meetings Commission, on Friday, October 23, 2020. Oral presentations regarding pending complaints will commence at 9:30 A.M. central time, or soon thereafter as matters may be heard, and proceed in the order noted in the attached agenda. The information necessary to access the teleconference is also included in the attached agenda.

Dated this 9th day of October 2020.



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

SOUTH DAKOTA OPEN MEETING COMMISSION

AGENDA
Teleconference Meeting Only

Teleconference dial-in number: 669-224-3412
Teleconference Access Code: 719-192-885

October 23, 2020
9:30 a.m. Central Time

1. Approval of the Agenda
2. Public Comment period as per SDCL 1-25-1
3. Approval of the Minutes of December 5, 2019 meeting
4. Consideration of Pending Complaints

A. In the Matter of Open Meeting Complaint 20-01, Board of Trustees for the City of Ward

Oral Presentations:

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

Board of Trustees for the City of Ward -15 minutes

B. In the Matter of Open Meeting Complaint 20-02, Belle Fourche City Council

Oral Presentations:

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

Belle Fourche City Council-15 minutes

C. In the Matter of Open Meeting Complaint 20-03, Yankton County Commission

Oral Presentations:

Complainant Todd B. Woods-15 minutes (a portion of this time may be reserved for rebuttal)

Yankton County Commission-15 minutes

D. In the Matter of Open Meeting Complaint 20-04, Pierre City Commission

Oral Presentations:

Complainant Caleb Matthew Gilkerson-15 minutes (a portion of this time may be reserved for rebuttal)

Pierre City Commission-15 minutes

5. Discussion regarding preparation of the minutes
6. Discussion regarding potential open meetings legislation
7. Election of Commission Chair & Co-Chair
8. Scheduling future meetings

All items are scheduled for 09:30 A.M. Central Time. Scheduled items may be delayed or moved to a later agenda item at the discretion of the OMC.

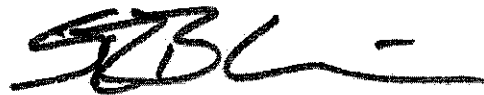
Due to public health concerns relating to Covid-19, and in accord with SDCL 1-25-1.6 and Executive Orders 2020-14, 2020-16, & 2020-30, this meeting is being held via teleconference only – no physical location will be provided for the public to listen and participate. If you wish to listen or participate in this meeting please dial 669-224-3412 and enter the access code 719-192-885 when prompted.

STATE OF SOUTH DAKOTA
OPEN MEETINGS COMMISSION

IN THE MATTER OF OPEN	)	OMC 2020-01
MEETINGS COMPLAINT AGAINST)	
BOARD OF TRUSTEES FOR THE	)	CERTIFICATE OF SERVICE
CITY OF WARD – MOODY COUNTY)	

The undersigned hereby certifies that a true and correct copy of the Notice of Hearing and proposed Agenda in the above-captioned matter, was served by United States mail, first class, postage prepaid upon Tom Kampmann 324 233rd Street, Ward, South Dakota 57026; Steven J. Britzman, Attorney for Board of Trustees for the City of Ward, 521 Sixth Street, Suite 104, Brookings, South Dakota 57006.

Dated this 9th day of October 2020.



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