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STATE OF SOUTH DAKOTA



February 25, 2022

Government Accountability Board  
2000 E. 52<sup>nd</sup> Street N  
Sioux Falls, SD 57104

RE: Response to the Government Accountability Board letter dated February 7, 2022

Dear Members of the Board:

I am in receipt of your February 7, 2022, letter.

I am supplementing the record, per your request, the transcript of the December 14, 2021, hearing. I am labeling this submission as Exhibit P. It can be found also at the following link:

<https://sdpb.sd.gov/sdpbpodcast/2021/interim/goal2142021.mp3>

Second, I am supplementing the record with a transcript of the previously submitted Exhibit F. The transcript is labeled and submitted as Exhibit Q.

Third, I am also supplementing the record with a transcript of a public question and answer presentation at the Rotary Club in Sioux Falls, South Dakota, on December 13, 2021. I am labeling this submission as Exhibit R.

<https://www.youtube.com/watch?v=kKTwlsgryV0>

A transcript of Secretary Hultman's GOAC testimony has previously been provided to the Board and will be referenced herein as HULTMAN (See, Exhibit A). Transcripts of Governor Noem's November 5, 2021, press conference (herein referred to as NOEM 1: See, Exhibit Q) and December 13, 2021, comments to the Sioux Falls Rotary Club are attached (herein referred to as NOEM 2: See, Exhibit R). The transcript of Sherry Bren's December 14, 2021, GOAC testimony is also attached and referenced as BREN. Each transcript reference is followed by citation to the pertinent page/line.

The process afforded Kassidy Peters' application for, and issuance of, a real estate appraiser's license, and the ensuing termination of long-time state employee Sherry Bren, has been justified to the public and the South Dakota legislature on four grounds that are false: (1) that the Department of Labor has never denied a license; (2) that Peters' application was not discussed by the Governor, Secretary of Labor and ranking state personnel during a July 27,

2021, meeting at the Governor's residence; (3) that the meeting had no influence on the disposition of Peters' application; and (4) that the Department of Labor followed established procedures when processing Peters' application.

These justifications derive primarily from two sources: (1) the testimony of South Dakota Department of Labor Secretary Marcia Hultman before the Government Operations and Audit Committee (GOAC) on October 28, 2021; and (2) the public statements of Governor Kristi Noem, in particular a press conference held by Governor Noem on November 5, 2021, and comments to the Sioux Falls Rotary Club on December 13, 2021. The falsity of these justifications is demonstrated in the testimony of Sherry Bren before GOAC on December 14, 2021.

### **PROCESS**

To understand the nature of the false justifications for the issuance of Peters' real estate appraiser license and the termination of Sherry Bren, it is necessary to understand the process that was in place at the time of Peters' application. The steps in that process were:

1. Applicant files an application.
2. If deficient, the applicant is provided a report identifying deficiencies and given an opportunity to correct deficiencies through an "Agreed Disposition."
3. If deficient a second time, the Executive Director (Bren) sends a letter to the applicant transmitting proposed findings of fact and conclusions of law and an order of denial.
4. An applicant may then reapply.

BREN at page 11, line 18 thru page 13, line 31; page 16, lines 41-49; page 17, line 42-48; page 34, line 42-49; page 41, lines 12-18.

### **DEVIATIONS FROM PROCESS IN PETERS' CASE**

A review of the subject transcripts reveals deviations from established process and the falsity of the justifications for issuing a real estate appraiser license to Peters and terminating Bren.

#### **1. DEPARTMENT OF LABOR HAS NOT ISSUED ANY DENIALS**

Secretary Hultman represented to GOAC that issuing Peters a license was consistent with the Department's practice of never issuing denials. HULTMAN at page 11, lines 34-36; page 12, lines 47-48 & page 13 lines 1-2; page 14, lines 15-22; page 17; lines 22-23. In response to a direct question from Senator Nesiba asking whether, at a Department meeting before the meeting at the Governor's residence, "there was an understanding that Cassidy Peters' application was going to be denied," Secretary Hultman responded that "there has been no denial of applications." HULTMAN at page 16, lines 39-44 and page 17, lines 22-23.

In answer to another question of whether Bren “at any point in this process ever recommend[ed] denial of Kassidy Peters’ application,” Secretary Hultman answered “not to my knowledge.” HULTMAN at page 24, lines 6-10.

Contrary to this testimony, Bren testified that denials are not unheard of; Secretary Hultman had entered a denial in another case during the period of May 2019 and June 2020. BREN at page 15, lines 47-48 & page 16, lines 1-2; page 24, lines 38-39.

Though denials are unusual, Bren had prepared an order denying Peters’ application with findings of fact/conclusions of law which she had signed on or about July 20, 2021, and transmitted to Peters. BREN at page 23, line 29-31; page 34, line 1-6.

## 2. PETERS’ APPLICATION WAS NOT DISCUSSED AT GOVERNOR’S RESIDENCE MEETING

According to at least one public statement by the Governor, Peters’ application was not discussed at the meeting at the Governor’s residence. NOEM 1 at page 2, line 47.

Contrary to this representation, a “plan forward” for Peters’ was discussed at the end of the meeting. HULTMAN at page 13, lines 7-10. Department staff counsel had prepared a list of issues for Bren to address at the meeting, including whether Peters could “take certain classes and resubmit.” BREN at page 23, lines 13-19. Peters spoke at the meeting regarding her “difficulties” with the process and passed around a letter from her appraisal process review supervisor. BREN at page 25, lines 26-29.

## 3. THE MEETING HAD NO INFLUENCE ON THE DISPOSITION OF PETERS’ APPLICATION

Governor Noem publicly denied that Peters had an application pending at the time of the meeting. NOEM 1 at page 2, lines 37-42. According to Secretary Hultman, the plan for Peters had already been “determined” and “set in place” prior to the meeting. HULTMAN at page 13, lines 7-10; page 19, lines 1-9; page 21, lines 13-16.

Contrary to these representations, the meeting at the Governor’s residence was ultimately all about Peters’ application, even though Bren had prepared findings and conclusions and an order denying the application, which had been provided to Peters “immediately prior to the meeting.” BREN at page 23, line 29-31; page 34, line 1-6. Prior to the meeting, Peters was between Steps 3 and 4 of the process outlined above. According to that process, after two failed attempts, she was required to reapply. But after the meeting at the Governor’s residence, Bren “returned to [her] office knowing that a second agreement would be provided to Peters that included the terms and conditions discussed at the meeting.” BREN at page 25, lines 29-32. Peters was not required to reapply. Thus, as a result of the meeting, the disposition of Peters’ application changed from denial to a third opportunity to correct deficiencies. Bren had staff counsel extend a contract with the outside reviewer overseeing Peters’ application in order to facilitate further process for Peters. BREN at page 25, lines 32-37.



4. DEPARTMENT OF LABOR'S PROCESS IN PETERS' CASE WAS "NORMAL"

Peters license approval and the termination of Bren have been justified on the grounds that the process in Peters' case was "normal" and that the "Stipulation Agreement" – the third opportunity to correct deficiencies – afforded to Peters is common. HULTMAN at page 14, lines 24-43, page 15; lines 45-46; page 16, lines 22-27; page 16, lines 33-35; NOEM 1 at page 1, 24-27; page 2, lines 39-42; page 3, lines 32-35; NOEM 2 at page 2; lines 5-9. Secretary Hultman informed GOAC that Bren was "on board with the plan going forward" for Peters, though Bren had prepared a denial order. HULTMAN at page 24, lines 12-17.

Contrary to this version of events, Bren testified that the "Stipulation Agreement" entered into with Peters after the meeting at the Governor's residence is "not within recognized upgrade procedures," "not normal practice," an "exception" to "normal process," an abnormal "third opportunity" for review, and "outside of the recognized upgrade procedures." BREN at page 15, lines 17-31; page 16, lines 25-30; page 26, lines 8-11; page 33, lines 6-10; page 34, line 47-49; page 35, lines 7-9; page 41, lines 12-18.

In a "Transmittal Letter" prepared by Bren in March or April of 2021 notifying Peters of her initial failure to meet licensing requirements, Bren had proposed an Agreed Disposition requiring Peters to take additional classes but Bren "was asked [by the Secretary of Labor] to remove that" and make additional education a recommendation rather than a condition. BREN at page 25, lines 18-20; page 36, lines 45-49 thru page 37, lines 1-2. It was not common for the Secretary of Labor to suggest such amendments to an Agreed Disposition. BREN at page 37, lines 4-7.

Nor is it common practice for an applicant to receive and attend a meeting with the Governor, Secretary of Labor and other high-ranking state officials. HULTMAN at page 10, lines 38-41.

The day after Peters' application was approved, Bren was "forced to retire." HULTMAN at page 23, lines 44-46; BREN at page 20, line 35.

[REDACTED]

The evidence suggests that Sherry Bren was subjected to inappropriate and possibly illegal influence in the performance of her official duties. Thus a full investigation is warranted. As indicated in the December 15, 2021, letter there are numerous documents that are still outstanding along with numerous witnesses that should be interviewed.

Respectfully submitted,



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JRR/dd  
Enclosure