

MADISON COUNTY
OFFICE OF THE
PROSECUTING ATTORNEY

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February 7, 2018

Sugar-Salem School District #322
Board of Trustees
ATTN: District Office Staff
105 West Center
P.O. Box 150
Sugar City, ID 83448

Re: Complaint of an Open Meeting Act Violation.

Dear District Office Staff:

I write to you in my capacity as the civil deputy at the Madison County Prosecutor's Office. On or about February 2, 2018, our office received a letter from Ms. Jennifer Swindell, CEO and Managing Editor of Idaho Education News, alleging the Sugar-Salem School District's Board of Trustees violated Idaho's open meeting law by hiring a superintendent and keeping that choice a secret. I have attached a copy of Ms. Swindell's correspondence hereto for your review.

Under Idaho Code § 74-208(5), county prosecuting attorneys have the duty to enforce the Open Meetings Act in relation to local public agencies within their respective jurisdictions. Mr. Sid Brown, as the Madison County Prosecutor, has jurisdiction over public agencies within Madison County in relation to the Open Meetings Act, and has asked that I follow up with you regarding this matter.

Our office's approach to the enforcement of the Open Meetings Act is as follows. When a complaint has been made, we first reach out to the local agency and give them the opportunity to review the complaint, comment on the allegation(s), provide all supporting documentation of the action that occurred, and either self-correct any violation or deny the same, prior to our initiation of formal enforcement proceedings on behalf of the public. In the event you deny the violation, the Madison County Prosecutor's Office will render our decision regarding potential pursuit of penalty or a civil action in court if necessary.

Should you acknowledge a potential defect in the above-referenced proceeding and take remedial action to cure the violation, this office would ask for notice of such be sent to this office prior to February 16, 2018, with written assurance that the correction will be implemented prior to February 21, 2018.

If you deny the allegation(s), please provide notice of the same to my office with a factual basis for the denial, evidence and legal argument in support of your denial, to be received by our office on or before February 16, 2018.

If you are represented by counsel, please forward this correspondence to her or him and have them contact our office immediately. There are various deadlines imposed upon each of us by the Open Meetings Act that must be followed.

Otherwise, our office looks forward to working with you on this matter in furtherance of a commitment to the public interest.

Do not hesitate to contact me with any questions or concerns.

Sincerely,



Troy D. Evans

Cc: Ms. Jennifer Swindell

February 2, 2018

Sid D. Brown
Madison County Prosecutor
159 E. Main St., P.O. Box 350
Rexburg, ID 83440-0350

It is my belief the Sugar-Salem School District's Board of Trustees violated Idaho's open meeting laws by hiring a superintendent and keeping its choice a secret. This action occurred on Thursday, January 25, 2018.

According to draft board minutes obtained by me through a public records request, Sugar-Salem trustees entered into executive session "to consider hiring an employee". The trustees then returned to an open meeting and according to the draft minutes "The board members deliberated about which candidate they should offer the position to." No names were mentioned. The board then made a motion to "offer the superintendent position to candidate O." It was approved by a vote of 5-0. The minutes go on to reflect "Kristin Galbraith (board chair) went and called candidate O on the phone and he accepted the offer." The true name of the candidate was not named in the open meeting, according to the draft minutes.

What is clear is that pursuant to Idaho Code 74-202(1) a decision means: any determination, action, vote or final disposition upon a motion, proposal, resolution, order, ordinance or measure on which a vote of the governing body is required, at any meeting at which a quorum is present, but shall not include those ministerial or administrative actions necessary to carry out a decision previously adopted in a meeting held in compliance with this chapter.

The trustees' use of a pseudonymous identifier in this decision for a candidate disclosed only in the secret of executive session would, if permitted, effectively render Idaho Code 74-201 a nullity: "...that the formation of public policy is public business and shall not be conducted in secret." Here, a decision was rendered, but the decision itself is meaningless without the names of the person voted upon, known only to the attendees of the executive session. **The public will forever be unable to identify which candidate was discussed — and selected — for accuracy, transparency and accountability.**

Please consider this a formal complaint regarding the Sugar-Salem School District's Board of Trustees violation of Idaho's open meeting laws.

Respectfully,

A handwritten signature in cursive script that reads "Jennifer Swindell".

Jennifer Swindell
CEO, Managing Editor of Idaho Education News
jswindell@idahodnews.org 208.473.8811